The Philippines

1Bilateral trade and investment

According to the China Customs, the bilateral trade volume between China and the Philippines in 2006 reached US＄23.41 billion, up by 33.3% year on year, among which China s export to the Philippines was US＄5.74 billion, up by 22.4% year on year, while China s import from the Philippines amounted to US＄17.67 billion, up by 37.3% year on year. China had a deficit of US＄11.93 billion. China mainly exported to the Philippines machinery and electronic products(including electrical and electronic products, semi conductor devices, integrated circuits and micro electronic components), processed oil, cereals and cereal products, coal, textile yarn and products thereof, etc. China s main imports from the Philippines included integrated circuits and micro electronic components, semi conductor devices, electrical and electronic products, inductors and parts, bananas, fresh and dried fruit, nuts, processed oil, etc.

According to the Ministry of Commerce(hereinafter referred to as MOFCOM), by the end of 2006, the accumulated turnover of engineering contracts completed by Chinese companies in Philippines had reached US＄1.24 billion, and the volume of completed labor service contracts had reached US＄52.45 million.

According to MOFCOM, China s total non financial foreign direct investment(FDI), approved by or filed with MOFCOM, reached US＄2.86 million in 2006. Philippines investors invested in 147 projects in China in 2006, with a total contractual investment of US＄459 million and an actual utilization of US＄130 million.

2Changes in trade and investment regime

Legislation governing the trade and investment in the Philippines remained quite stable in 2006. Foreign trade is subject mainly to such laws as Tariff and Customs Code, Export Development Act, Anti Dumping Act, Countervailing Act, Safeguard Measures Act, while investment in the Philippines is subject mainly to Omnibus Investment Code, Foreign Investment Act, Tax code and Price Act. In addition, Consumer Act of the Philippines and Intellectual Property Code constitute an important integral part of the Philippine trade and investment regime.

2.1Legislation on trade and investment and its development

2.1.1Tariff regime

The Philippines imposes ad valorem duties on most imports while imposing specific duties and compound duties on a minority part of the imports. According to the tariff reform plan taking effect in 1995, the Philippines is gradually lowering its tariff rates on imports. At present, the Philippines levies ad valorem MFN duties at rates ranging from 0% to 65%. Furthermore, according to the Tax Code, the Philippines will impose excise duties on imports of some products such as automobiles, tobacco, alcohol and alcoholic products. Value added tax will be levied on imported goods based on customs valuation plus tariffs and excise duties.

As a key member of ASEAN, the Philippines adopts special preferential tax rates on the imports from other ASEAN members, generally from 0% to 5%. Pursuant to the Agreement on Trade in Goods between China and ASEAN signed in November 2004, ASEAN should gradually reduce the tariff rates on imports from China as of 2006. According to the commitments made by the Philippines in the Agreement on Trade in Goods, the Philippines will gradually reduce the tariff rates on normal products from China to zero before 2010 and 2012, the tariff rates on sensitive products to 20% before 2012 and then to 0%—5% in 2018, the tariff rates on highly sensitive products to 50% in 2015.

To perform the obligations provided in the ASEAN China Free Trade Area Agreement, Philippine President Arroyo issued Executive Order No. 485 on 29 December 2005, declaring as of 1 January 2006, the Philippines would impose zero tariffs on 214 categories of Chinese vegetables and fruit which are incorporated in the "early harvest" plan. On 12 January 2006, Philippine President Arroyo issued Executive Order No. 487, stipulating as of 1 January 2006, the tariff rates under the normal track of the ASEAN China Free Trade Area would be reduced. Import tariff rates above 20% would be reduced to 20%, 15%—19% to 15%, 10%—14% to 10%, 6%—9% to 5% and 0—5% remaining unchanged. The MFN tariff rates would be imposed on the imports from China which were not incorporated in the annex to Executive Order No. 487.

2.1.2Import administration

In 2006, import licensing still applied to over 130 categories of products, such as autos, tractors, motorcycles, durable consumer goods, cement and some agricultural produces.

In the spirit of the Uruguay Round negotiations, the Philippines has the obligations to eliminate the tariff quotas on agricultural produces such as rice before June 2005. However, in order to protect the interests of domestic farmers, the Philippines made a request to the WTO, hoping the quota administration on rice could be extended to 2012. On 27 April 2005, the governments of China and the Philippines reached an agreement on the extension of the “special treatment” to the Philippine rice under the WTO framework. The Chinese side agreed to extend the special treatment to the Philippine rice for seven years while the Philippines agreed to increase the import quota on rice, of which 25,000 tons per year was appropriated for China. The in quota tariff rate of rice would be reduced from 50% at present to 40%. Besides rice, another 15 categories of imports including chickens and ducks are subject to quota administration.

According to the relevant stipulations of the 2001 Tariff and Customs Code, the Philippines generally takes the actual transaction price as the base for Customs evaluation and withdraws the original unreasonable practice of taking the domestic consumption price as the base for Customs evaluation. The Philippine Customs processes all the Customs declaration documents of the importers or their agencies through the Automated Customs Operating System which makes use of its selectivity system to classify shipments with different levels of risks. A low risk shipment goes through the “green lane” and is generally subject to no documentary review or physical inspection but is covered by “post audit review”. A moderate risk shipment goes through the “yellow lane” and is subject to documentary review but no physical inspection. A high risk shipment channels through the “red lane” and is subject to both documentary review and physical inspection prior to its release. The Philippine Customs has also added a “super green lane”, for qualified importers of extremely low risk, to provide immediate clearance. At present, the Philippine Customs is gradually lowering the cost of using the system by the importers so as to improve its utilization rate.

2.1.3Export administration

The Philippine government encourages export trade apart from banning export of ramie seeds and seedlings, some wild animals and live fish. Incentive policies for export oriented enterprises and export products are stipulated in Omnibus Investment Act and Export Development Act.

Export incentive measures taken by the Philippines include simplifying export procedures and exempting additional taxes on export; rebate of VAT for the imported raw materials used in processing for re export, foreign exchange assistance and the using of low cost facilities in the export processing zones. In addition, exporters can retain 100% foreign exchanges from export for the use of any purposes. Export financing is granted as well. Exporters can apply to local banks for low interest rate foreign exchange loans if the L/C, the purchase contract or sales contract are submitted. The Central Bank provides guarantee to encourage the export of labor intensive products using local raw materials. Incentive measures concerning raw materials and tariffs are also granted to the establishment of export processing zones, bonded warehouses and various kinds of industrial parks. On 18 January 2006, the trade promotion fund was jointly established by the government agencies including the Department of Trade and Industry(DTI), the Department of Budget Administration, the Central Bank and the National Development Bureau of the Philippines as well as the Philippine Export Confederation to provide financial support for export enterprises in capacity building, product design, market research, overseas promotion and image building, etc.

On 3 August 2006, Philippine President Arroyo issued Executive Order No. 554, requiring that all the administrative departments, agencies and state owned enterprises related to export trade should eliminate the administrative fees and charges relevant to export trade unless otherwise stated in the special laws. In the meantime, it also demands to simplify the procedures and shorten the time for approval so as to improve the international competitiveness of the Philippine exports.

2.1.4Trade remedy measures

Pursuant to Anti Dumping Act, Countervailing Act and Safeguard Measures Act, the Philippine Tariff Commission is responsible for the public hearing and consultation of anti dumping and countervailing investigations as well as the initial investigation related to safeguard measures.

2.2Investment administration and its development

Except for the restricted industries stipulated in the Foreign Investment Negative List published by the National Economic Development Bureau, the Philippines encourages foreign investment. Numerous investment incentive policies are specified in the industrial and regional investment laws and regulations including Export Development Act, Omnibus Investment Code, Foreign Investment Code, BOT Act, Mining Act, Iron and Steel Act and the Special Economic Zone Act.

According to the relevant investment laws, foreign investors are entitled to the rights to withdrawing investment, remitting profits back, paying off foreign debts, and being exempted from confiscation or appropriation. The Special Economic Zone Act of the

Philippines stipulates that foreign invested enterprises located in the state level economic zones enjoy the following preferential treatment: four year corporate income tax holiday which can be extended to eight years at most; upon the expiration of the exemption period of corporate income tax, companies can choose to pay 5% gross income tax in lieu of state(central) and local taxes; imported capital goods(equipment), CKDs, components, raw materials, breeding stock or gene materials for breeding purposes are exempted from import duties and other taxes and fees; the purchase of the like products in the Philippines can be granted tax credit, that is to say, various taxes and fees should be paid at first, but will be refunded after the products are exported(including the imposition of import duties and the refund of it); exemption of dock dues and export fees and charges is available; foreign investors and their family members are granted permanent residents; procedures for import and hiring of foreign employees are simplified, etc.

The 2006 Investment Priorities Plan published by the Philippine Board of Investment in September 2006 specifies the incentive measures for fields of investment priorities in eleven areas of health care, electronics, auto parts and components, energy, shipbuilding, garments, building materials and furniture: 100% foreign ownership is allowed; corporate income tax is exempted for six years since the date of registration; if the capital equipment and the annual employee proportion of the enterprise comply with the regulations of BOI of DTI, the newly employed of the enterprise(including skilled and unskilled labor) enjoy 50% reduction of their income tax within five years of the registration of the enterprise and 75% income tax reduction is granted if the enterprise is located in less developed regions; contract tax is exempted; breeding stock or genetic products are exempted from import duties and tax credit is granted if domestic breeding stock or genetic products are used; the import of spare parts and components are exempted from various kinds of fees and taxes if the company exports over 70% of its products; Customs procedures are simplified and dock dues and export fees and charges are exempted. In January 2007, the Philippines made major modifications to the 2007 plan:(1) To increase its revenues, the Philippine government will not grant any incentives to the building, expansion and transformation of projects in any of the existing economic activities;(2) BOI cancelled the simplified registration procedure for applying for incentives, stating that DTI has to consult the Ministry of Finance to grant incentives to any projects stipulated in Omnibus Investment Code.

2.3Legislation on trade and investment and its development

Pursuant to Decree 9337/2005, corporate income tax rate of the Philippines was raised from 32% to 35%, with the implementation period from 1 November 2005 to 31 December 2008. As of 1 January 2009, corporate income tax rate will be reduced to 30%.

In November 2005, a new VAT act was passed in the Philippines. According to the act, the VAT rate will be increased from 10% to 12% as of 1 February 2006 so as to regulate the domestic tax regime and increase the revenues of the government. Besides, selling of certain agricultural produces is exempted from VAT.

3Barriers to trade

3.1Tariff and tariff measures

The weighted average tariff rate published by the Philippine Tariff Commission in 2006 is 3.56%, a little lower than 3.78% in 2005. In breakdown, the weighted average tariff rate of agricultural produces and foodstuffs is 9.22%, chemical products 4.16%, textiles, paper and leather 6.84%, mineral products 2.79% and finished industrial products 2.97%.

The “tariff rate recalibration” stipulated in 2003 Tariff and Customs Code of the Philippines still remains the main barrier to tariff administration. According to the regulation, the Philippine government can use executive orders to selectively raise tariff rates of any products. Executive Order No. 419 published in April 2005 regulated that the tariff rate of autos with the capacity of ten or more passengers including the driver would be 25%, which was 5% higher than the original MFN tariff rate. The order still remains effective to this date. The above mentioned tariff administrative measures which have granted too much discretion to the administrative authorities have resulted in the great uncertainty of those relevant imports. The escalating tariff rates have constituted certain obstacles to the relevant Chinese export companies and the Chinese side is concerned about it.

3.1.1Tariff peaks

In spite of the relatively low weighted average tariff rates on the imports to the Philippines with 56.4% of the products rates lower than 5% in 2006, over 20% of the imports to the Philippines are levied high tariff rates of over 15%. In breakdown, products with rates of over 7.6% account for more than 20%; products with rates of over 5.2% account for more than 30%; and some products are even levied high rates of 50% and 65%. At present, the imports subject to tariff peaks mainly include live animals, pork, poultry meat, vegetables, rice, sugar, coffee, powered vehicles, motorcycles, etc. The average tariff rate reached as high as 43.5%.

3.1.2Tariff quotas

Tariff quota restrictions still remain effective in the Philippines in 2006. Besides rice, livestock and meat thereof, potatoes, corn, coffee, and sugar are also subject to tariff quotas. In quota tariff rate on fresh and frozen pork is 30%, out quota rate 30%. In quota tariff rate on corn is 35%, out quota rate 40%. In quota tariff rate on frozen chicken is 40%, out quota rate 40%. In quota tariff rate on turkey is 30%, out quota rate 40%.

3.2Barriers to Customs procedures

Though the Tariff and Customs Code of the Philippines specifies that the Philippine Customs is the administrative authority responsible for Customs evaluation of imports, post review, risk management and IPR border protection, there are private agencies taking part in the process of Customs evaluation, especially the evaluation of goods through the "green lane". In addition, some Customs staff charge extra fees not stipulated by the law. The Chinese side believes that these practices are detrimental to the smooth Customs clearance of imports.

3.3Import restrictions

The Fishing Act of the Philippines allows the import of fresh and frozen fish and fish products on condition that the import license must be obtained from the Ministry of Agriculture of the Philippines. No import licenses will be issued by the Ministry of Agriculture until it believes that the Philippines has to import the product to ensure domestic food supply and that the import will not constitute any material injury or threat of injury to the domestic industry. In 2006, under the excuse of protecting domestic farmers interests, the Ministry of Agriculture of the Philippines ordered BPI to stop issuing the import license for onions. While the Chinese side respects the licensing administration of the Philippines on sensitive products such as autos, tractors, motorcycles, durable consumer goods, fish and other agricultural products, it is concerned about the inconsistency between the reasons given by the Philippines to stop issuing the license and the relevant regulations incorporated in the Agreement on Import Licensing Procedures of the WTO.

3.4Imposition of discriminatory taxes and fees on imported goods

In December 2004, The Philippine President signed the decree to increase the excise duties on tobacco and alcoholic products. The decree specifies different duties on imported liquor and domestically produced liquor. The government imposes US＄0.19 per liter excise tax on liquor distilled by using the raw materials available locally while the liquor made from imported raw materials is subject to excise taxes varying from US＄1.76 to US＄7.06 per liter. For low alcohol contained wine such as 14% or below basically using imported materials, the excise tax is US＄0.28 per liter. US＄0.56 per liter excise tax is levied on drinks with alcohol content ranging from 14% to 25%. If the alcohol content is higher than 25%, the tax of the product is levied as liquor. That the imposition of excise duties on imported liquor is obviously higher than the domestically produced liquor has evidently constituted discrimination against the imports and is in violation of the WTO national treatment principle.

3.5Technical barriers to trade

At present, according to the mandatory national standards, the Philippines requires the inspection of 91 categories of products including household electric appliances, cosmetics, medical equipment, and wire and cables. Mandatory labeling requirements are set for textiles and clothing. If labeling of the imports is found to be inconsistent with the requirements, not only the default products, but also the whole lot of the products will be distrained and destroyed. The Chinese side holds the view that the regulation which enlarges the scope of punishment is likely to cause damage to qualified goods in practice, and is thus concerned about it.

Bureau of Product Standards of the Philippines published PNS 154:2005, regulations on ceramic wall and floor tiles on 13 September 2006. It specifies dimensions and tolerances, physical and chemical characteristics, sampling, testing and marking requirements of ceramic wall and floor tiles and fittings. It applies to both glazed and unglazed ceramic tiles and fittings generally used for wall and floor coverings. Those found not complying with the requirements cannot enter the Philippine market. The Chinese side believes there are obvious discrepancies between the contents of PNS 154:2005 and the international standards widely adopted in the world and that it is unnecessary to have mandatory requirements on the specifications and sizes of ceramic wall and floor tiles. Besides, these requirements are not in conformity with trade practice or the technological development trend. Furthermore, the testing methods of ceramic wall and floor tiles lack scientific evidence. Consequently, they will increase the cost of manufacturers and exporters by a large margin. The Chinese side hopes that the Philippines will modify the contents of the standards in question, call off the mandatory implementation of the standard so as to be in compliance with the requirement of taking the international standards as the basis and the principle of legitimate goal laid in the WTO TBT Agreement.

The Department of Trade and Industry(DTI) of the Philippines specifies that as of January 2006, all imported color TV sets or black and white TV sets with sizes from

14 inches to 29 inches should be subject to the inspection and certification by the testing center of BPS and Solid Laguna Corporation. Products can not be put on the market without the designated certification labels. The Chinese side holds the view that the practice of appointing Solid Laguna Corporation as the sole "third party" inspection agency has resulted in inconvenience in importing business and increased the cost of the imports.

3.6Sanitary and phytosanitary measures

In 2006, the Philippine Ministry of Agriculture still maintained VQC on the import of meat and poultry products. Executive Order No. 26 of the Philippines requires the officially recognized importers to obtain VQC before importing meat and poultry products. At present, the validity of VQC in the Philippines is 60 days and it is not extendable. In addition, VQC in the Philippines can only be used once. When the amount of actual import exceeds that permitted by the VQC, the importer must apply for another VQC and the importer will be fined. This regulation allows the relevant authorities to have more discretion when issuing VQC. The Chinese side hopes that the application for VQC in the Philippines can be more flexible and transparent so that it is in consistency with the WTO/SPS agreement.

3.7Trade remedy measures

Up to the end of 2006, the Philippines had initiated eight cases of trade remedies against China. The outstanding trade remedy cases at present include the anti dumping case of sodium tripoly phosphate initiated in 1998 and reviewed in 2004, the safeguard measures case of imported goods such as printed glass, float glass, mirrors and sodium tripoly phosphate filed in 2003.

In July 2006, provisional safeguard measures of 200 days were taken for sodium tripoly phosphate in the Philippines and US＄0.29 per kilo duties was levied on the import of the product in question.

On 21 June 2006, the Philippine Tariff Commission decided to initiate safeguard measures investigation into imported printed glass, float glass, and mirrors originated in China and made a conclusion in November 2006, resulting in three year safeguard measures for the afore mentioned products. This has been the second round of safeguard measures for these products by the Philippines since the expiration of the first round executed in 2004. Since then, the export of glass and glass products from China to the Philippines has dropped dramatically. In 2004 the export amount was only 10% of that of 2003, and in 2005 it was 35% of that of 2003.

The Chinese side hopes that the Philippines will restrain itself from adopting trade remedy measures to avoid the adverse effect on the Sino　Philippines bilateral trade.

3.8Government procurement

Executive Order No. 120/1993 of the Philippine government requires counter　purchase if government institutions or government　controlled companies want to purchase goods worthy of more than US＄1 million. The Department of Trade and Industry requires that foreign suppliers should be obliged to purchase Philippine goods worth more than half the value of its supply from the international trading company of the Philippines; otherwise they shall be fined.

The 2003 Government Procurement Act of the Philippines grants preferential treatment to the domestically　produced goods and raw materials. In addition, the Philippines has specified the eligibility of contractors in the government procurement for infrastructure projects such as water, electricity, telecommunications, and transportation, requiring that the contractors for infrastructure projects should be at least 60 percent Filipino　owned.

In 2004, the Philippine President signed Executive Order No.278, providing incentive policies to the Philippine enterprises participating in infrastructure building. The Executive Order states that in the bidding process for the service of infrastructure facilities, the Philippine government should try its best to choose those enterprises which make use of the domestic fund, domestic resources and employ domestic professionals.

Although the Philippines is not a signatory to the Government Procurement Agreement of the WTO, its discriminatory policies in government procurement constitute substantial obstacles to Chinese enterprises in bidding for the Philippine government projects. The Chinese side is concerned about it.

3.9Subsidies

The Philippines offers tax exemptions to auto manufacturers through implementing the export incentives program for domestically　manufactured automobiles. The program allows any auto manufacturers which export finished vehicles from the Philippines to receive a benefit equivalent to US＄400 per vehicle for year one and two, US＄300 for year three, and US＄100 by year five. In October 2005, the coverage was extended to include auto parts. The export subsidies have enhanced the competitiveness of the auto and auto parts of the Philippines. The Chinese side is concerned about the inconsistency between the export subsidy measures of the Philippines and the relevant rules and regulations of the WTO.

3.10Barriers to trade in services

3.10.1Banking

Only ten foreign banks are permitted to open full service branches in the form of wholly owned subsidiaries in the Philippines and foreign banks are limited to six branches each. Four foreign owned banks that had been operating in the Philippines prior to 1948 are each allowed to operate up to twelve branches. The Philippines also specifies 70% of the total bank assets and 50% of the total capital should be controlled by the Philippine local banks. It is also required that the branches of foreign banks should not take from or provide to its mother banks and/or other banks a net capital more than four times of its permanent capital.

3.10.2Insurance

The Philippines allows foreign insurance companies to set up wholly owned foreign insurance institutions, but the minimum capital requirement on foreign insurance companies is on the rise. Foreign funded insurance companies are not allowed to be engaged in insurance business of government funded projects which can only be insured by the insurance companies with state ownership. This regulation was extended to cover the public and private BOT projects in 1994. The prevailing Philippine insurance regulatory law also provides that all the insurance and reinsurance companies operating in the Philippines should pay at least 10% of the premium to the Philippine National Reinsurance Company.

3.10.3Securities and other financial services

The Philippines allows foreign securities companies to have access to its domestic securities market, yet foreign equity in securities underwriting is limited to 60 percent. Membership on a board of directors of foreign invested mutual funds is limited to Philippine citizens.

3.10.4Basic telecommunications

The Philippines does not provide access for foreign satellite telecommunications services to its domestic market and limits foreign ownership of telecommunications firms to 40 percent. Besides, telecommunication companies can not hire foreigners to be their general managers and the proportion of foreign staff should not exceed that of foreign equity.

3.10.5Advertising

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

3.10.6Public utilities

Relevant laws in the Philippines restricts the foreign ownership of the companies of public utilities such as water, electricity, communications, and transportation system, of which domestic ownership should exceed 60% and the managers of the contractors are limited to Philippine citizens.

3.10.7Professional services

The Philippine authorities reserve the practice of licensed professions of engineering, architecture, law, medicine, and accountancy to Philippine citizens.

3.10.8Shipping

The Philippines prohibits foreign flagged vessels from engaging in the provision of domestic carriage services. The country s bareboat chartering laws stipulate that Philippine flagged vessels should be manned by a Filipino crew and disallows foreign crew or officers, except as supernumeraries.

3.10.9Courier service

The Philippines specifies that foreign courier service companies cannot engage in the Philippine domestic courier services unless they sign contracts with 100% Philippine owned companies or establish joint ventures with Philippine ownerships exceeding 60%.

3.10.10Retailing

The 2000 Retailing Act of the Philippines allows foreign investors to establish retail businesses with registered capital not less than 2.5 million US dollars ten years after the law being effective, but foreign ownership cannot exceed 30%. Foreign ownership cannot exceed 10% if the company deals in the sale of luxury goods. Foreign investors have to satisfy the reciprocal requirements. That is to say, only those nationals or legal persons whose countries allow the Philippine nationals and legal persons to engage in retail business can deal in the same business in the Philippines.

4Barriers to investment

The Philippine laws allow foreign investors to set up joint ventures, branches and representative offices. The law stipulates that Filipino shareholders should not be fewer than five and more than fifteen in a joint venture, most of whom should be permanent residents of the Philippines. The secretary of a joint venture should be a Philippine citizen. The Philippine Securities and Exchange Commission also requires that the financial personnel of joint ventures should be permanent residents of the Philippines. Prior to the operation of branches in the Philippines, the mother company of the foreign party should have registered with the Philippine Securities and Exchange Commission. It is also required by Corporation Code that the branch should at least deposit negotiable securities with a real market value of 100,000 pesos at the Philippine Securities and Exchange Commission. Within six months after each fiscal year, the branch should deposit negotiable securities with a market value of 2% of its total revenues(no less than five million pesos) at the Philippine Securities and Exchange Commission. In addition, representative offices should register with the Philippine Securities and Exchange Commission and remit US＄30,000 to the Philippines.

The above mentioned regulations on the establishment of joint ventures, branches and representative offices required of foreign investors by the Philippines have raised the threshold of foreign investment, constituting substantial barriers to foreign investment.