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Philippine Institute for Development Studies
Surian sa mga Pag-aaral Pangkaunlaran ng Pilipinas

Globalization and State Capacity: The Philippines

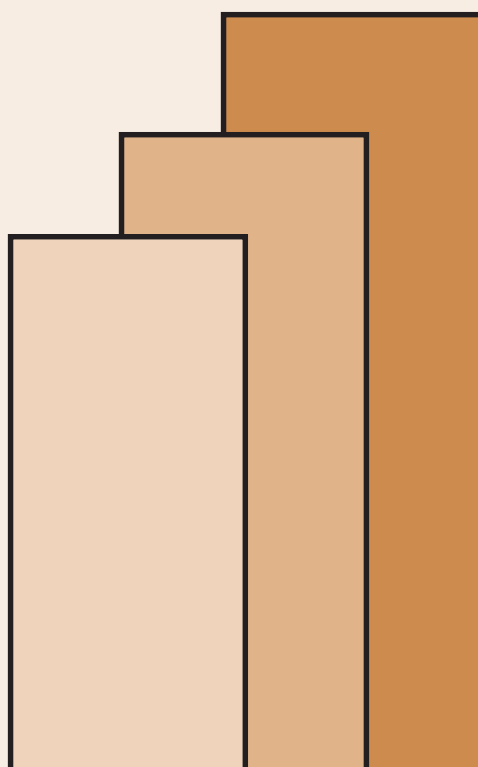
Epictetus E. Patalinghug

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GLOBALIZATION AND STATE CAPACITY

THE PHILIPPINES

Philippine Institute for Development Studies

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ABBREVIATIONS

ADB	Asian Development Bank
ALG	Alternative Law Groups
ASEAN	Association of Southeast Asian Nations
ATA	Air Transport Agreement
BCDA	Bases Conversion and Development Authority
BESF	Budget of Expenditures and Sources of Financing
BFAD	Bureau of Food and Drugs
BI	Bureau of Immigration
BIR	Bureau of Internal Revenue
BMBE	Barangay Micro Business Enterprise
BOC	Bureau of Customs
BOI	Board of Investments
BOP	Balance of payments
BOT	Build-Operate-Transfer
BPS	Bureau of Product Standards
BPTTT	Bureau of Patents, Trademarks and Technology Transfer
BSMBD	Bureau of Small and Medium Business Development
BSP	Bangko Sentral ng Philippines
BTRCP	Bureau of Trade Regulation and Consumer Protection
CAB	Civil Aeronautics Board
CDC	Clark Development Corporation
CESO	Career Executive Service Officer
CSC	Civil Service Commission
CSO	Central Support Office [NEDA]
DBCC	Development Budget Coordination Committee
DepEd	Department of Education
DOE	Department of Education
DOF	Department of Finance
DOLE	Department of Labor and Employment
DOST	Department of Science and Technology
DOT	Department of Tourism
DTDC	Domestic Trade Development Council
DTI	Department of Trade and Industry
EDC	Export Development Council
EO	Executive Order
EPS	Electronic Procurement System
EPZA	Export Processing Zone Authority
FAP	Foreign assisted project
FIA	Foreign Investments Act
GOCC	Government-owned and -controlled corporation
GTEB	Garments and Textile Export Board
HLURB	Housing and Land Use Regulatory Board
IC	Insurance Commission
ICC	Investment Coordination Committee

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ICC-CC	Investment Coordination Committee Cabinet Committee
ICC-TB	Investment Coordination Committee Technical Board
ICT	Information and communication technology
IDC	Industrial Development Council
IPO	Intellectual Property Office
IPP	Investment Priorities Plan
IT	Information technology
ITECC	Information Technology and E-Commerce Council
JURIS	Judicial Reform Initiative Support
LEDAC	Legislative Executive Development Advisory Council
LFP	Locally funded project
LTFRB	Land Transportation Franchising and Regulatory Board
MARINA	Maritime Industry Authority
MCP	Major capital project
MOA	Memorandum of Agreement
MTPDP	Medium Term Philippine Development Plan
MTPIP	Medium Term Philippine Investment Plan
MWSS	Metropolitan Water and Sewerage System
NARA	National Authority for Revenue Administration
NBDB	National Book Development Board
NCC	National Computer Center
NDO	National Development Office [NEDA]
NEA	National Electrification Administration
NEDA	National Economic and Development Authority
NGA	National Government Agency
NPC	National Power Corporation
NRO	NEDA Regional Office
NTC	National Telecommunications Commission
ODA	Official development assistance
PACC	Presidential Anti-Crime Commission
PCA	Philippine Coconut Authority
PEDP	Philippine Export Development Plan
PER	Project Evaluation Report
PEZA	Philippine Economic Zone Authority
PHILJA	Philippine Judicial Academy
PLDT	Philippine Long Distance Telephone
PNP	Philippine National Police
PTA	Philippine Tourism Authority
RA	Republic Act
RDC	Regional Development Council
RDO	Regional Development Office [NEDA]
SBMA	Subic Bay Metropolitan Authority
SEC	Securities and Exchange Commission
SMED	Small and Medium Enterprise Development
SPCPD	Southern Philippines Council for Peace and Development
SRA	Sugar Regulatory Administration

TCC	Tariff and Customs Code
TESDA	Technical Education and Skills Development Authority
TIDC	Trade and Industry Development Council
WB	World Bank
WIPO	World Intellectual Property Office
WTO	World Trade Organization

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ABSTRACT

The arrival of globalization has brought about a lot of challenges for nations to meet. This paper takes a look at the capability of the Philippine state to cope with the demands of globalization. It documents the rules, laws, regulations, institutions and agencies that underlie the administrative capacity of the Philippines to promote trade and investments, and thereby achieve economic growth. A review and analysis of Philippine practices and experience is undertaken to determine the state's readiness for globalization. The study will cover three aspects of state capacity that contribute to the promotion of trade and investments: (1) administrative capacity, (2) systems of transparency and accountability, and (3) legal and judicial frameworks. Finally the paper recommends areas wherein the Philippine government must focus on based on the three aspects as well as suggests follow up in-depth studies on issues covering: capacity to promote healthy competition; regulatory framework and capacity; capacity to develop industries, sectors, and regions; policies for social development, redistributive justice, and poverty reduction; policies to promote performance, productivity, and competitiveness; and policies to protect the environment.

Keywords: globalization, economic development, transparency

EXECUTIVE SUMMARY

The Philippines has agencies and institutions that review, approve, and implement projects, and facilitate legislation, which promote investments that support socioeconomic development, such as the Investment Coordination Committee, the Legislative Executive Development Advisory Council (LEDAC), and the Development Budget Coordination Committee. The LEDAC is tasked to facilitate the passage of priority legislation that supports socioeconomic development planning so that such activities that promote economic development are given annual budgetary appropriations. It also provides a mechanism for facilitating consensus between the legislative and executive branches on various socioeconomic goals and objectives of the current administration. Moreover, the legislative and executive branches jointly undertake investment planning and decisionmaking through the preparation of the Medium-Term Philippine Development Plan (MTPDP) and the Medium-Term Philippine Investment Plan (MTPIP), and the discussion of the Budget of Expenditures and Sources of Financing. The creation of consultative forums and joint technical working groups and committees in various levels of the government bureaucracy is a positive development towards building transparency and consensus among key agencies and institutions (Systems and Gap Analysis, 1997).

In 1996, the Philippines created the Industry Development Council (IDC) to formulate policies that rationalize the government's industry promotion and development programs, among other things. With its emphasis on industrial and investment policies, the IDC complements the objectives of the MTPDP and MTPIP. In addition, the Department of Trade and Industry (DTI) leads the domestic investment activities, and the industry and trade promotions of the government and spearheads the Export Development Council (EDC), which oversees the implementation of the Philippine Export Development Plan (PEDP), as well as policy reform formulation and implementation. The EDC is an institution that has the potential to enhance the country's capability to benefit from increased trade and the coming globalization by involving all sectors of society in developing and expanding the country's export sector. Moreover, The IDC and EDC provide a forum for government policy formulation and implementation and consensus building. Nevertheless, in order for the Philippines to have a coordinated industry and export policy formulation and plan implementation, the IDC and EDC should be merged into one entity that will include all key players in the sector. In June 2000, EO 225 was enacted effectively integrating the three industry development councils—EDC, IDC, and DTDC—into the Trade and Industry Development Council. Furthermore, the government vigorously promotes investment activities through the Board of Investments (BOI) and the Philippine Economic Zone Authority (PEZA). However, there is a need to rationalize the mandates and functions of BOI and PEZA to prevent overlapping jurisdictions in policymaking and implementation regarding the country's investment activities.

Government agencies and institutions are tasked to ensure and enhance the country's credibility in enforcing the rule of law, which governs market transactions and the enforcement of contracts. Failure to ensure law and order, protect property and property rights, and apply rules and policies predictably may impede growth and development because the state is not considered credible by investors. There are a number of agencies and institutions in the Philippines that deal with trade and investment and related activities. Among these are the National Economic and Development Authority, DTI, BOI, PEZA, the

Securities and Exchange Commission, the Bangko Sentral ng Pilipinas, the Department of Finance, the Bureau of Internal Revenue, the Bureau of Customs, and Bureau of Immigration, which is under the Department of Justice. Together and in partnership with the private sector and nongovernment organizations, these agencies help promote and ensure transparency and accountability in trade and investment activities in the country.

While there are no legal or judicial measures that directly bear on globalization, *per se*, there are other legal and judicial measures that bear on economic development and globalization. The present Philippine legal and judicial systems are adequate to help the country benefit from globalization.

In 1992, the Ramos Administration laid the foundations for plans and programs to open up the Philippine market to competition and the implementation of an economic reform agenda through various legislative measures and executive orders aimed at preparing for, coping with, and ultimately benefiting from globalization. The Estrada Administration continued, to some extent, this economic reform with the enactment of laws on general banking, securities regulation, electronic commerce, and measures that moderate the negative impact of globalization. From the first quarter of 2001 to the present, the Macapagal-Arroyo Administration has seen the implementation of a five-pronged anti-poverty strategy and the promulgation of executive and administrative orders designed to limit corruption, encourage transparency in government transactions, stop money laundering, terrorism, and in the process, make the Philippines an acceptable global partner.

In the judicial and quasi-judicial sphere, new laws relating to the Court of Appeals, the Sandiganbayan, and the National Labor Relations Commission have been enacted and new rules on criminal procedure, electronic evidence, search and seizure in civil action for infringement of intellectual property rights, among others, have been promulgated.

In order to protect intellectual property rights, the Philippines enacted RA 8293, also known as the Intellectual Property Code of the Philippines, which took effect on January 1, 1998. The intellectual property code consists of copyright and related rights, trademarks and service marks, geographical indications, industrial designs, patents, topographies of integrated circuits, protection of undisclosed information, utility models, and new plant varieties. The Intellectual Property Office administers intellectual property rights other than copyright, while the National Library governs copyright and related rights.

Overall the Philippines has adequate administrative capacity in promoting trade and investment, has enough institutions and laws that promote transparency and accountability in trade and investment activities, and has enacted laws and other measures that support the legal and judicial framework relating to trade and investment. Therefore, the Philippines may be able to benefit from globalization and increased trade and investments, and at the same time moderate the negative effects of globalization in some sectors.

I. INTRODUCTION

The determining factor behind the state of fiscal affairs in the Philippines is the effectiveness of the state to cope with the demands of globalization. An effective state allows the efficient provision of goods and services. An effective state likewise possesses rules and institutions that allow markets to function and people to enjoy everyday life. Although the state is central to economic and social development, it does not necessarily follow that it acts as a direct provider of goods and services; it can achieve growth by simply serving as partner, catalyst, and facilitator. This study documents the rules, laws, regulations, institutions, and agencies that underlie the administrative capacity of the Philippines to promote trade and investments, and thereby to achieve economic growth.

The report is organized as follows. Section II describes the objective of the study. Section III explains the methodology used in assessing state capacity. Section IV analyzes the administrative capacity of the state. Section V discusses the legal and judicial framework. Section VI assesses transparency and accountability in trade and investment activities, while Section VII discusses the conclusions and recommendations.

II. OBJECTIVE AND RATIONALE

The objective of this study is to document and analyze Philippine experiences and practices related to state capacity and globalization. The study will cover three aspects of state capacity that contribute to the promotion of trade and investments: (1) administrative capacity, (2) systems of transparency and accountability, and (3) legal and judicial frameworks. In addition, the study will provide some information on the overall structure and mechanisms of access to justice for the poor.

III. METHODOLOGY

The World Development Report (1997) states that, “good government is not a luxury, [but] a vital necessity for development.” Snowden and Vane (1999) further that, “countries with perverse [social] infrastructure, such as a corrupt bureaucracy, generate rent-seeking activities devoted to the diversion of resources rather than productive activities.” The following discussion focuses on the role and capabilities of the state in order for it to function effectively and efficiently, achieve social stability, and promote socioeconomic development.

State Capacity

What constitutes state capacity? A framework is presented in Table 1 that “classifies the functions of government along a continuum, from activities that will not be undertaken at all without state intervention to activities in which the state plays an activist role in coordinating markets or redistributing assets” (World Development Report 1997). The framework suggests that governments assume some role and perform a number of functions depending on their state capability.

Basic functions such as the provision of pure public goods – property rights, macroeconomic stability, public health, safe water, roads, national defense, protection of the economically poor – should be the focus of countries with low state capacity (World Development Report 1997). Moreover, the World Development Report (1997) furthers that “social and institutional (including legal) fundamentals [should also be provided] to avoid social disruption and ensure sustained development.”

States with more capability provide more than the basic services. At this level, states perform intermediate functions such as management of negative externalities, regulation of markets and industries, and the provision of social insurance (World Development Report 1997). Moreover, the World Development Report (1997) argues that states with intermediate capability “cannot choose to provide or intervene, but only how best to intervene, since government can work with partnership with markets and civil society to ensure that these public goods are provided.”

The World Development Report (1997) contends that, “states with strong capability can take on more activist functions, dealing with the problem of missing markets by helping coordination.” The experience of Japan and the East Asian Tigers indicates that the state has a role in promoting markets through active industrial and financial policy.

Table 1
Functions of the State

Minimal functions	Providing Pure Public Goods <ul style="list-style-type: none"> ▪ National defense ▪ Law and order ▪ Property rights ▪ Macroeconomic management ▪ Public health 			Protecting the Poor <ul style="list-style-type: none"> ▪ Antipoverty programs ▪ Disaster relief
Intermediate functions	Addressing Externalities <ul style="list-style-type: none"> ▪ Basic education ▪ Environmental protection 	Regulating Monopolies <ul style="list-style-type: none"> ▪ Utility regulation ▪ Antitrust policy 	Overcoming Imperfect Information <ul style="list-style-type: none"> ▪ Insurance (health, life, pensions) ▪ Financial regulation ▪ Consumer protection 	Providing social Insurance <ul style="list-style-type: none"> ▪ Redistributive pensions ▪ Family allowances ▪ Unemployment insurance
Activist functions	Coordinating Private Activity <ul style="list-style-type: none"> Fostering markets and cluster initiatives 			Redistribution <ul style="list-style-type: none"> Asset redistribution

Source: World Development Report (1997)

Thus, depending on its capability, a government can function as provider of basic services (although it may not be the only provider), as market regulator to moderate the effects of market failure, as interventionist in the sense that it should coordinate the actions of markets and civil society in effecting more efficient outcomes, or as an activist in legislating or promoting active industrial and financial policy.

The Philippines is currently into all three levels, assuming the role and performing the functions of a state with low, intermediate, and strong capability. Although the Philippine Government has moved on beyond the basic services by venturing into regulation of markets,

it has yet to provide programs that alleviate the conditions of the economically poor, a requirement for the basic functions of the state. Moreover, although a pension system exists, an indication that the country is performing functions beyond the basic services, the amounts given to the pensioner are insufficient to meet basic needs. Furthermore, the national health care coverage (Medicare and PhilHealth) is insufficient to meet the needs of destitute individuals that require health services beyond basic health care.

The Philippine Government has also been implementing asset redistribution through the Comprehensive Agrarian Reform Program (CARP) and land grants to informal settlers in urban areas, an indication that the country is performing an activist function, a characteristic of countries with strong state capability. What's more, the government has created trade and export development councils that are analog to those implemented in East Asian economies in the 1990s, although the country has yet to provide the basic services required of countries with low state capacity and has yet to deliver the basic functions of the state – law and order, property rights (e.g., contractual obligations between parties are usually muddled in Philippine courts) — in a more effective and efficient manner.

It seems that the Philippine Government is performing a lot of functions, some of which characterize a state with strong capability. A closer look at the outcomes of these activities seem to indicate that the Philippine Government is taking on functions that it is not yet capable of, at least given the definition of a state with strong capability and given the fact that the economically poor are not adequately protected and provided for, and that law and order is still tenuous.

The performance of an activist function, such as land redistribution by the Department of Agrarian Reform and the creation of trade and development councils spearheaded by the DTI, is a characteristic of a state with strong capability. However, the Philippine Government has yet to adequately perform the functions of a state with minimal capability, such as the protection of property rights and the enforcement of law and order. The flagrant and widespread violation of intellectual property rights (illegal software, music, and films sold in major malls around the country), illegal settlements in public and private lands, and the recent spate of kidnappings and other heinous crimes are testament that the Philippines is not yet capable of delivering even the most basic functions of the state.

Moreover, the Philippines still needs to adequately perform intermediate functions such as the protection of the environment, provision of unemployment benefits, and enforcement of antitrust laws before it can take on more activist roles, such as asset redistribution (land redistribution programs for farmers and informal settlers in urban areas) and interventionist trade and investment policies. These inadequacies seem to indicate that the Philippines is a state with weak capability due to its inability to adequately provide functions that are characteristics of a state with minimal capacity, and yet it is already into activities that are distinguishing qualities of a state with strong capability.

The Philippine Government should first attend to the basic functions of the state — providing pure public goods (national defense, law and order, property rights, macroeconomic management, and public health) and protecting the poor (antipoverty programs and disaster relief). After adequately performing its basic functions, it should then move on to providing intermediate functions such as addressing externalities, regulating monopolies, overcoming imperfect information, and providing social insurance. This is crucial because the little resources and capabilities that the Philippines Government has

should be utilized to ensure the provision of the basic and intermediate functions of the state before it takes on functions that are characteristics of a state with strong capability.

Systems of Transparency and Accountability¹

The key to achieving transparency and accountability in governance is to find rules and norms that create the appropriate incentives for state agencies and officials to act in the collective interest, while restraining arbitrary action. This can be achieved through:

Rules and restraints, such as an independent judiciary, are mechanisms for enforcing the rule of law, which are critical foundations for sustainable development. Appropriate separation of powers and the presence of watchdog bodies also restrain arbitrary behavior.

- Building accountability necessitates formal mechanisms of restraint, anchored in core state institutions.
- Power can be divided – executive, legislative, judiciary or among central, regional, provincial or local governments.
- The broader the separation of powers, the greater the number of veto points that can check arbitrary action (although multiple veto points can make it as hard to change the harmful rules as the beneficial ones).
- In many developing countries legislative and judicial oversight of the executive branch is weak – the setting of goals and the links to the policies needed to achieve them are sometimes diffused, legislators suffer from limited information and capability (and in the Philippines, most members of the legislature are corrupt and/or incompetent), and judicial independence is compromised.
- An independent judiciary is vital to ensure that the legislative and executive authorities are accountable under the law, and to interpret and enforce the terms of the nation's constitution (i.e., supreme court justices must be appointed for life and appointments must go through a rigorous process).
- Formal checks and balances can help reduce but are seldom enough, so that reforming the civil service, restraining political patronage, and improving civil service pay may be needed to reduce corruption by giving public officials more incentive to play by the rules.

Competitive pressure can come from within the government bureaucracy, through recruitment of civil servants on the basis of merit. It can come from the private sector by contracting out services and allow private firms by competing with government agencies in the provision of goods and services. It can also come from the international marketplace, through trade and the influence of global bond markets on fiscal decisions.

- Government agencies should be free from political interference, must have limited but clear objectives, given adequate resources and training, and the staff must be well compensated.
- Cross-country evidence indicates that bureaucracies with more competitive, merit-based recruitment and promotion practices, and better pay are more capable.
- Political appointments must be the exception, not the rule, so that the state bureaucracy relies on highly competitive recruitment and a promotion system that explicitly rewards

¹ The discussion on “Systems of Transparency and Accountability” is taken from the World Development Report (1997).

merit (ongoing reforms in the Philippines are examining these issues in an effort to improve bureaucratic capability).

- Countries with weak capacity need first to strengthen rule-based compliance and financial accountability within the public sector, provide greater clarity of purpose and task, and introduce performance measurement.
- As output measurement and ex post controls on inputs are strengthened, state agencies can be provided more flexibility in exchange for greater accountability for results (for countries with weak capacity and inadequate controls, government executives that are given more flexibility may result to increased arbitrariness and corruption with no commensurate improvement in performance).

Voice and partnership is the means to achieve transparency and openness in modern society and governance, such as business councils, interaction groups, and consumer groups. Institutional working arrangements with community groups can contribute to greater state effectiveness by giving citizens a greater voice in the formulation [and implementation] of government policies.

- Governments are more effective when they listen to businesses and citizens and work in partnership with them in deciding and implementing policy.
- Even the best-intentioned government is unlikely to meet collective needs efficiently if it does not know what the people's needs are.
- Government programs work better when they seek the participation of potential users, and when they tap the community's reservoir of social capital rather than work against it.
- Policymaking should be embedded in consultative processes, which provide civil society, labor unions, and private firms opportunities for input and oversight.
- Decentralization can improve the quality of government and the representation of local business and citizens' interests.

Legal and Judicial Capacity

The Philippines must demonstrate a credible rule of law. Writing laws is rather easy, while enforcing them are fraught with problems, especially when the independence of the judiciary is compromised (World Development Report 1997). The Philippine Government can reinvigorate the public sector through the containment and reduction of opportunities for corruption by cutting back on discretionary action and authority.

The first step in ensuring a credible rule of law is to have a constitution that protects the basic rights of persons (natural or juridical) and to have institutions that interpret and implement these laws as they are. Only when arbitrary actions and discretionary authority are restrained can the Philippines achieve some semblance of justice – the demonstration of a credible rule of law. The second step is to enhance the institutions of restraint because such things take time to develop and establish themselves, while international commitment mechanisms may help fill in the gap even as the state's legal and judicial institutions develop, through international adjudication guarantees from international agencies (World Development Report 1997).

When corruption is entrenched, as in the case of the Philippines, more dramatic efforts are needed to uproot it, and these efforts should be focused on better monitoring of official action – both by formal institutions and by individual citizens – and punishment of wrongdoing in the courts (World Development Report 1997). The Department of Justice and

the Office of the Ombudsman are two agencies that are supposed to interpret and implement the rule of law in the Philippines. The history of both agencies is littered with corruption and ineptness, which have fostered skepticism and ridicule among the general public with regard to the rule of law in the Philippines. Moreover, Philippine courts are famous for their slowness in litigation and taking action against those that break the rules and laws of the land. Corruption, despite claims to the contrary, is not culture specific, and reducing it will require a multi-pronged approach, which must include the private sector and the civil society more broadly (World Development Report 1997).

Standards and Indicators of State Capacity²

To ensure effective institutions, the Philippine Government must supply effective market supporting institutions and create the demand for such institutions (i.e., agencies, systems, and mechanisms). The following are examples of how to ensure the effectiveness of institutions in effecting socioeconomic development:

1. Design institutions to complement what already exists – in terms of other supporting institutions, human capabilities, and available technologies.
2. Innovate to design institutions that work – and drop those initiatives that do not.
3. Connect communities of market players through open information flows and open trade.
4. Promote competition among jurisdictions, firms, and individuals.

State Intervention in Socioeconomic Development

The economic rationale for state intervention usually revolves around market failure and the concern for equity. Market failure results when “a market left on its own fails to allocate resources efficiently” (Mankiw 1998). Most of the discussions supporting government regulation stems from market failure with an implicit assumption that the “process of government intervention is costless or, at the least, its benefits exceed the costs” (Weidenbaum 1995). The following situations are some examples with varying degrees of market failure.

The state, even one with a low state capability, is tasked to provide public goods, which are nonrival and nonexcludable. These characteristics make it infeasible to charge fees for the use of public goods, which means that private suppliers do not have the incentive to supply them (World Development Report 1997). In this case, public goods necessitate that the government takes an interventionist role by providing the public goods that the people need. Examples of public goods are national defense and rural roads.

Common property goods are rival but nonexcludable so the government and private investors can share the cost of providing such goods (World Development Report 1997). Common property goods, such as irrigation systems for a farming community or Level II water supply systems (public faucets) for an urban community can be operated and maintained by the users. The government simply provides the basic infrastructure, while the community shoulders the maintenance and other operating expenses. Although the government intervenes to provide the basic goods at the outset, its intervention is limited.

Club goods are nonrival but excludable so private investors, with some help from the government, may be persuaded to provide club goods, such as toll roads and interurban highways, which directly benefit some motorists and certain communities (World

² The discussion on “Standards and Indicators of State Capacity” is taken from the World Development Report (2002).

Development Report 1997). In this case, the government simply promotes the undertaking by asking for bids from the private sector to undertake such projects through build-operate-and-transfer and other related financing schemes. Since toll and other user fees will be collected for such facilities to cover the costs of construction, operation, and maintenance, the private sector has the incentive to supply club goods.

Externalities arise when the actions of an individual or a firm hurt or benefit others without that individual or firm paying or receiving compensation (World Development Report 1997). Negative externalities, such as pollution, may be solved by using Pigovian taxes or tradable pollution permits or regulating the industry (Mankiw 1998). Thus, the government may either regulate an industry that produces negative externalities or may simply intervene to moderate the effects of such externalities by using Pigovian taxes or tradable pollution permits. Positive externalities, such as technology transfer and primary education, benefit society as a whole. In such cases, the government and the private sector may share in the provision of such goods (primary education) or the government may simply provide incentives or subsidies to the private sector to adopt or develop new technologies.

Government regulation may be desirable when the industry is a natural monopoly in order to protect the public from monopolistic firm behavior. However, Weidenbaum (1995) argues that natural monopoly is only “natural” in a given technological or economic environment, that is, today’s monopoly can become tomorrow’s competitive industry (e.g., US railroads now compete with trucking and barges for moving cargo). Moreover, changes in technology and markets have created new scope for competition in services once considered monopolies (World Development Report 1997), such as in power generation and transmission, postal service, airlines, and telecommunications. Thus, the government may simply provide the right mix of incentives to entice the private sector to take on services that the government used to provide.

Incomplete markets and imperfect or asymmetric information are pervasive problems that may result in inefficient outcomes (World Development Report 1997). A number of countries have sought to address these problems by ensuring widespread coverage in health, unemployment, and other social insurance; and holding down costs on medication by implementing price controls of ethical (prescription) drugs or the introduction of generic drugs. Governments have addressed these problems by regulating private insurance, financing or mandating social insurance, or by directly providing healthcare (World Development Report 1997).

Promoting equity may compel governments to intervene even in the absence of market failure (World Development Report 1997). Competitive markets do not always result in equitable and socially acceptable outcomes. Persons with limited assets may be left with insufficient resources to achieve socially acceptable living standards. Thus, government intervention may be required to protect the economically, socially, and politically weak through asset redistribution or direct payments.

IV. ADMINISTRATIVE CAPACITY OF THE STATE

The state is tasked to promote the well being of its citizens by having a social infrastructure – the collection of laws, institutions, systems, and government policies that make up the economic environment – that helps the country attain its potential. Social capability refers to the various institutional arrangements that set the framework for the conduct of productive economic activities without which market economies cannot function

effectively and efficiently (Snowdon and Vane 1999). Capability, in general, is the ability of the state to take on and foster collective actions such as law and order and basic infrastructure to support social and economic development, while effectiveness is a result of state capability in meeting society's demand for basic services (World Development Report 1997). In the Philippines, agencies and institutions have been established to assist the government in helping the country achieve its potential with regard to socioeconomic development and the delivery of basic services to the people, among others. Thus, the administrative capacity of the state to promote socioeconomic development rests on the interplay and dynamism of a network of agencies and institutions in the government and the private sector to promote investments in capital projects and social programs, as well as the capability, effectiveness and efficiency of agencies and institutional arrangements that transpire in the course and conduct of development-oriented activities.

In order to promote investments that support socioeconomic development, the Philippine Government has setup agencies and institutions to review, approve, and implement projects, and facilitate legislation that support these projects and programs. There are three major institutions – the Investment Coordination Committee (ICC), the Legislative Executive Development Advisory Council, and the Development Budget Coordination Committee – that facilitate, recommend, or review government projects and programs geared towards socioeconomic development. The institution that oversees the major capital investments of the government is the ICC.³ The ICC is a multi-agency working group that reviews the fiscal, monetary, and balance of payments implications of major capital projects.

Project Review and Approval

The ICC follows a three-step project review and approval process, which can take around two-and-a-half months. Upon submission of the required documents by the proponent agency to the ICC Secretariat, the ICC Technical Board (ICC-TB) takes around four to six weeks to conduct project evaluation and prepare the project evaluation report (PER). The ICC review process breaks down when the ICC-TB and ICC Cabinet Committee (ICC-CC) take too long in reviewing a project, which may happen due to a number of factors including noninclusion of the proposed project in the list of priority projects for the year, technical flaws in the project proposal that are difficult to resolve or require interagency consultation for the resolution of problems, the proponent agency lacks the institutional mandate to undertake such projects, the proponent agency lacks the institutional capacity to undertake the project, or there is insufficient budgetary appropriations for the proponent agency to undertake the project in the current year. Once the PER is complete, the ICC Secretariat furnishes the proponent agency with a copy in order for the agency to respond to the issues raised in the PER. This exercise takes at least one week to complete and may take longer should the proponent agency be unable to satisfactorily comply with regard to the issues raised by the ICC-TB. Projects that are not approved at the ICC-TB are remanded back to the ICC Secretariat for technical or other revisions so that it can be taken up in the next ICC-TB meeting.

Assuming that all goes well with the ICC-TB and the proponent agency during the post-PER process, the ICC Secretariat then forwards the project for further review by the ICC-CC, which deliberates on the merits of the proposed project. This process takes at least two weeks since there are only two ICC-CC meetings in a month. Projects that are not

³ The Appendix contains a more detailed discussion on the mandate and functions of ICC.

approved at this level are scheduled for further deliberations in the next ICC-CC meetings, while those that are approved are forwarded to the next NEDA Board meeting for formal approval and budgetary appropriations for the next fiscal year. The NEDA Board approval may take one month because it only meets in the second week of the month, which means that projects that are not approved by the first week of the month are scheduled for next month's meeting. Thus, although the ICC review and approval process theoretically takes two-and-a-half months, it could take longer due to factors that may be beyond the control of the ICC Secretariat and the proponent agency, which means that the system is flawed and needs to be more flexible to accommodate priority projects and programs for immediate approval and implementation.

Interagency Coordination

The legislative and executive branches jointly undertake investment planning and decisionmaking. In theory, there exists a detailed legislative involvement in the preparation of the Medium-Term Philippine Development Plan (MTPDP) and its attendant document, the Medium-Term Philippine Investment Plan (MTPIP), and the discussion of the Budget of Expenditures and Sources of Financing (BESF), although the legislature has shown limited commitment to the objectives of the medium-term plan because Congress has failed to approve the MTPDP (Systems and Gap Analysis 1997). Nevertheless, the main institution that oversees the coordination of developmental activities in the two branches of government is the Legislative Executive Development Advisory Council (LEDAC).⁴ The LEDAC is tasked, among other things, to facilitate the passage of priority legislation that supports socioeconomic development planning so that such activities that promote economic development are given annual budgetary appropriations. Moreover, the LEDAC provides a mechanism for facilitating consensus between the legislative and executive branches on various socioeconomic goals and objectives of the current administration. The creation of consultative forums, such as the LEDAC and joint technical working groups and committees in various levels of the government bureaucracy, is a positive development towards building transparency and consensus among key agencies and institutions (Systems and Gap Analysis, 1997).

Although on paper the LEDAC is a good avenue wherein the goals and objectives of the executive branch with regard to programs and projects for socioeconomic development are coordinated with the budgetary appropriation exercises conducted by the legislative branch, the process may become dysfunctional due to the divergent priorities of the two branches of government. The Philippines is one of the most politicized countries when it comes to appropriating budget for programs and projects. Congresspersons and other politicians exert pressure on the executive branch through the implementing agencies to accommodate their projects in their districts or constituencies, which may not be in line with the priorities set by the present administration. When this happens, the LEDAC breaks down as an institution that coordinates socioeconomic plans with budgetary appropriations and becomes a venue wherein the executive branch becomes exasperated with the myopic concerns and fragmented approach to national development of the legislative branch. The consequences of such dysfunctional behaviors may be the nonpassage of legislation that facilitates socioeconomic plans or the inclusion of congressional or politically motivated programs and projects that do not contribute to socioeconomic development in a national or

⁴ The Appendix contains a more detailed discussion on the mandate and functions of LEDAC.

regional scale. Though fraught with problems in its implementation, the LEDAC is still a positive step towards a consultative and more inclusive form of governance, which helps improve the capacity of the state in achieving its goals and objectives for economic development.

Complementing the functions of the LEDAC in the area of expenditure levels for programs and projects is the Development Budget Coordination Committee (DBCC).⁵ The DBCC is tasked to recommend for approval of the President the level of annual government expenditure program and the ceiling of government spending for economic and social development, among other things. The DBCC also recommends to the President the proper allocation of expenditures for all development activities for the various infrastructure or capital projects. Thus, the LEDAC promotes the facilitation of socioeconomic programs and projects through legislation, while the DBCC recommends the annual budget to be spent on programs and projects that contribute to socioeconomic development. The ICC, LEDAC, and DBCC are institutions that seek to coordinate the socioeconomic investment activities of the government in order to improve its capacity to attract more investments to finance programs and projects that improve the country's socioeconomic infrastructure. These institutions enhance the administrative capacity of the state because they promote interagency cooperation that leads to a more rational and coherent investment program.

There has been quite a debate with regard to how big a government should be or what services it should provide and the kind of interventions to make in order to promote economic development that putting this debate to rest may mean taking a look at the experiences of states in the last century that was characterized by robust economic growth and development in North America, Europe, Australia and New Zealand, and East Asia. The history of the developing and evolving states tends to show that industrialized countries, in general, have spent more on government services as a proportion of gross national product than lower income countries (World Development Report 1996). To further this argument, Bertucci and Alberti (2001) contend that intelligent states intervene strategically by creating the conditions that promote [economic] growth.

Investment Promotion

The Philippines vigorously promotes investment activities that lead to socioeconomic growth and development through the aforementioned institutions that facilitate investments and, more importantly, through its two major agencies that directly promote investment policies and programs – the Board of Investments⁶ (BOI) and the Philippine Economic Zone Authority⁷ (PEZA). As the lead agency in promoting investments, the BOI assists Filipino and foreign investors to venture and succeed in desirable areas of economic activities such as in food processing, construction, metal products, telecommunications, power and infrastructure projects, among others. The BOI is responsible for the policies and incentives that govern investments in the country, local or foreign. On the other hand, the PEZA is tasked to contribute to the accelerated creation of employment and other economic opportunities, especially in the countryside, and to spur the growth and diversification of exports by encouraging and supporting investments in the development and operation of economic zones. The PEZA regulates the policies and activities of the different special

⁵ The Appendix contains a more detailed discussion on the mandate and functions of DBCC.

⁶ The next section contains a more detailed discussion on the mandate and functions of BOI.

⁷ The next section contains a more detailed discussion on the mandate and functions of PEZA.

economic zones in the country, which are usually the venue of direct foreign investments and complement PEZA's functions by promoting their own suitability and attractiveness as destinations for foreign investments.

The delineation of functions between BOI and PEZA is unclear since both promote foreign trade and investments although the former is more general than the latter. But the apparent overlap in the functions of BOI and PEZA may be a source of confusion among foreign investors or worse, should foreign investors be required to deal with both agencies, the investment process may prove to be cumbersome, which could discourage direct foreign investments from flowing into the country. Thus, there is a need to rationalize the mandates and functions of BOI and PEZA to prevent overlapping jurisdictions in policy making and implementation regarding the country's investment activities.

Investment Planning and Coordination

To further its objective of promoting investments in key areas of economic development, the Philippine Government annually conducts an interagency investment planning exercise called the Investment Priorities Plan⁸ (IPP). The IPP is the government's blueprint for priority programs and projects in a fiscal year and is updated annually to reflect the developing priorities of the government with regard to socioeconomic sectors in a global environment.

The IPP is divided into national and regional lists. The national list includes export activities, mandatory inclusions under existing laws, and support to government programs – from livelihood, infrastructure and environmental projects to social and cultural programs. The regional list includes industry clustering endorsed by the Small and Medium Enterprise Development (SMED) Council and priority projects for marginalized and autonomous regions in the country. The SMED Council, with the help of Bureau of Small and Medium Business Development (BSMBD), is helping small and medium enterprises (SMEs) to better prepare for the coming globalization by reviewing and formulating policies and proposed legislative bills affecting the country's SMEs. The BSMBD supports the SMED Council through the conduct of policy researches and studies on SMEs, preparation of position papers, interagency coordination, implementation and enforcement of policies, and monitoring of the implementation of laws concerning SMEs.

The IPP embodies broad objectives for a competitive economy that is capable of building wealth for the country in a more interactive global setting and a robust agricultural sector that matches the global standards of efficiency. The IPP identifies specific priority economic areas and strategic activities that are able to sustain economic development. In a way, the IPP contains a coherent investment plan of the government to effect and promote economic development that strikes a balance between national and regional development, which may help the government attract more investments in the identified priority sectors. Nevertheless, Patalinghug (1992) observes that the IPP contains too many "priority areas," 261 in 1990 and 95 in 1991, whereas the South Korean Government was more selective by being more narrowly focused. Although strategic in its importance in achieving a rational and coherent investment plan, the process of including programs and projects in the annual IPP is compromised when congresspersons and other special interest groups pressure the executive branch in including programs and projects that benefit only certain districts and constituencies to the detriment of the rest of the country. When the programs and projects

⁸ The Appendix contains a more detailed discussion on the mandate and functions of IPP.

avored by the politicians run contrary to the priority programs and projects contained in the MTPDP and MTPIP, the process that governs the IPP becomes an exercise in futility.

Revenue Collection and Expenditure Programs

The government has been implementing reforms with regard to revenue collection to improve its effectiveness and efficiency in increasing its coffers to support its programs and projects. To this end, the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC), the two most important revenue collection agencies of the government, are rationalizing their collection mechanisms and improving their incentives for proper tax payments and collection of duties from businesses and individuals. Both agencies have started using information and communication technologies (ICTs) to support their operations and improve the delivery of service to their clientele and the general populace. Despite the government's efforts to boost its revenue collection, government expenditures still outstrip government revenues. The revenue – expenditure gap necessitates the infusion of large amounts of financing from foreign sources, as well as from domestic borrowing. Improving tax policy and administration are the key to closing the revenue gap (World Development Report 1996), although the gap is expected to continue given the increasing demand for government services stemming largely from the country's runaway population growth rate and antiquated service delivery systems. There is a pending bill Congress to create the National Authority for Revenue Administrative (NARA) to replace BIR and to strengthen tax administration.

Granted that the government will be able to sell state assets to finance its ever-increasing revenue shortfalls, it is expected that it will continue to rely on foreign borrowing to finance most of its major capital projects (MCPs) for the foreseeable future, especially when there are no longer any assets to sell. The only way for the government to stem its growing revenue shortfall is to improve its revenue collection capability and implement prudence in its expenditure programs. Thus, there is a need to reform the agencies and institutions that review, approve, plan, and program public investments such as the ICC, DBCC, LEDAC, and IPP. The government should discipline itself to drafting investment and expenditure programs closely linked to its level of revenues (from collection and borrowing) so that government resources are not rationed among expenditure programs (Systems and Gap Analysis 1997). This matching of revenues with expenditure programs will help the government achieve efficiency because it will be forced to select and implement programs and projects that have the highest impact on socioeconomic development to maximize the use of its scarce resources. (Low-impact programs and projects with regard to socioeconomic development will have to wait until enough resources are available for such projects.) This exercise will help the government improve its capacity in project selection and implementation, which may go a long way in terms of promoting and realizing socioeconomic development in the long term.

Fiscal Monitoring and Evaluation System

The Philippine Government's effort to rationalize its support for government corporations is one way of implementing prudence in its expenditure programs. In 1994, the Corporate Affairs Group of the Department of Finance (DOF-CAG) submitted the final report on the Fiscal Monitoring and Evaluation System Enhancement Project (referred to as

“the Project” in the remainder of the text) as part of the Reform Program for Government Corporations.

The Project was pursued to strengthen and institutionalize the Corporate Concerns Office of the DOF-CAG’s existing system of monitoring and evaluating the financial operations of retained government-owned-and-controlled corporations (GOCCs) and government financial institutions (GFIs), especially with respect to the economic management of fiscal resources. One of the outputs of the Project is a financial information system that will provide databases for the purpose of tracking corporate performance, as well as for policy analysis. The evaluation procedures center on the financial aspect of the operations of GOCCs and GFIs, which is of paramount importance when it comes to evaluating the requests of GOCCs and GFIs for budgetary assistance from the national government.

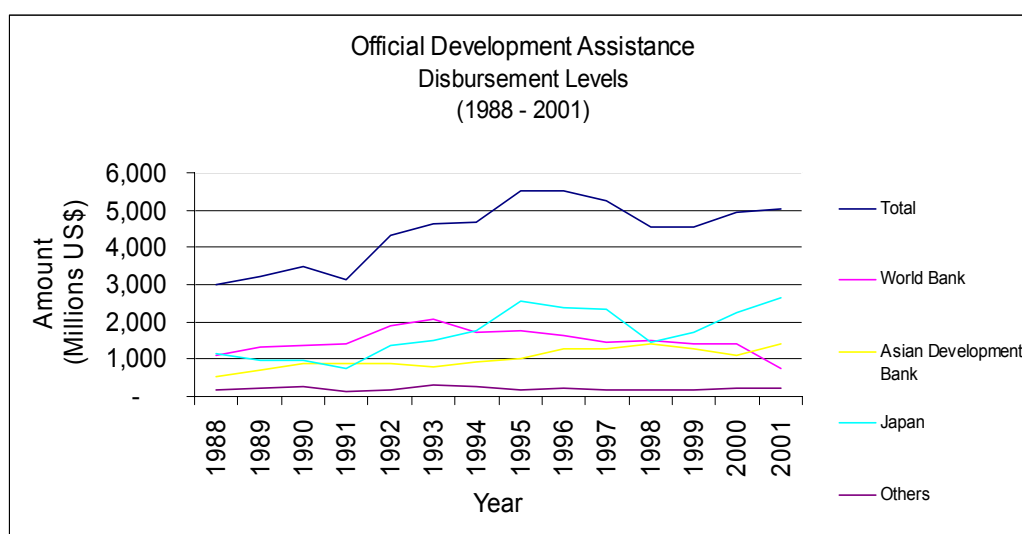
With the fiscal monitoring and evaluation system in place, the national government would be able to objectively evaluate whether or not it is in the best interest of the country and of the national economy to continue infusing huge amounts of resources to the financially strapped GOCCs and GFIs that usually ask for financial support. (Perhaps, the new system will help the government decide on the fate of the GOCC or GFI in question, whether it should continue in its operations or just be shuttered.) Implementing reforms that will help the GOCCs and GFIs to efficiently manage their fiscal resources may mean less reliance on the national government for budgetary support and capital projects. The effect would be less financial burden on the part of the national government since some of the retained GOCCs and GFIs may no longer require government infusion once the reforms are implemented. This means that the national government can have more resources (because of the freed up resources stemming from the reforms to streamline the operations of GOCCs and GFIs) to spend on other activities, such as programs and projects that further socioeconomic development.

Official Development Assistance

The Philippine Government has historically relied on foreign assisted projects to help develop its economic infrastructure (Systems and Gap Analysis, 1997). Since the IPP contains goals and objectives geared towards economic development that necessitate large amounts of resources – monetary or otherwise – the country regularly looks for foreign aid to fulfill its capital requirements. To this end, the Philippines benefits from loans and grants from multilateral and bilateral financing agencies. The country receives an average of US\$4,418 million in official development assistance⁹ (ODA) from multilateral and bilateral agencies from 1988 – 2001 (see Figure 1).

⁹ The basic data were provided by the Project Monitoring Staff of the National Economic and Development Authority.

Figure 1



The Government of Japan, through its loan and grant programs, contributes an average of US\$1,828 million annually in ODA for the aforementioned period and is the country's biggest source of aid financing. Japan's ODA contributions have increased more than 128 percent between 1988 and 2001. The contributions of World Bank (WB) and its various agencies have dwindled through the years, from a high of US\$2,062 million in 1993 to a low of US\$741 million in 2001, averaging US\$1,598 million from 1988 – 2001. Between 1989 and 2001, WB's annual contributions are down almost 33 percent. The Asian Development Bank (ADB) has been steadily increasing its ODA contributions to the country during the same period, averaging US\$1,107 million annually. In 2001, ADB contributed US\$1,432 million in ODA, up more than 162 percent from its level thirteen years earlier. ODA from other multilateral and bilateral agencies is not an important source of external financing to the country, although their contributions have increased more than 18 percent between 1988 and 2001, averaging just US\$226 million annually for the period.

Most projects funded by the Government of Japan, WB, and ADB are large multiyear capital investments. Other institutions such as the United Nations Development Programme and bilateral agencies usually finance social projects that relate to poverty alleviation, human resource development, institutional capability building and institutional reforms, among others. Indeed, development assistance plays a major role in the country's drive for economic development, but external support such as aid financing may achieve little if the Philippine Government's will to reform is weak, or worse, non-existent (World Development Report, 1997).

Despite the huge amount of development assistance that flows into the country every year, the donor agencies' proclivity to finance certain projects in specific sectors of their own choosing without regard to the priorities set in the MTPDP, MTPIP, and IPP may be problematic. In relying largely on foreign-assisted projects to contribute to economic development, the government may at times implement projects that it has been forced into because of the donor agencies' preferences, which may not at all contribute to the medium-term plan of the country. Thus, despite the huge infusions of foreign aid into the country

every year, the programs and projects they finance sometimes do not benefit the larger population and only contribute to the increasing marginalization of the economically poor and the politically weak.

Figure 2

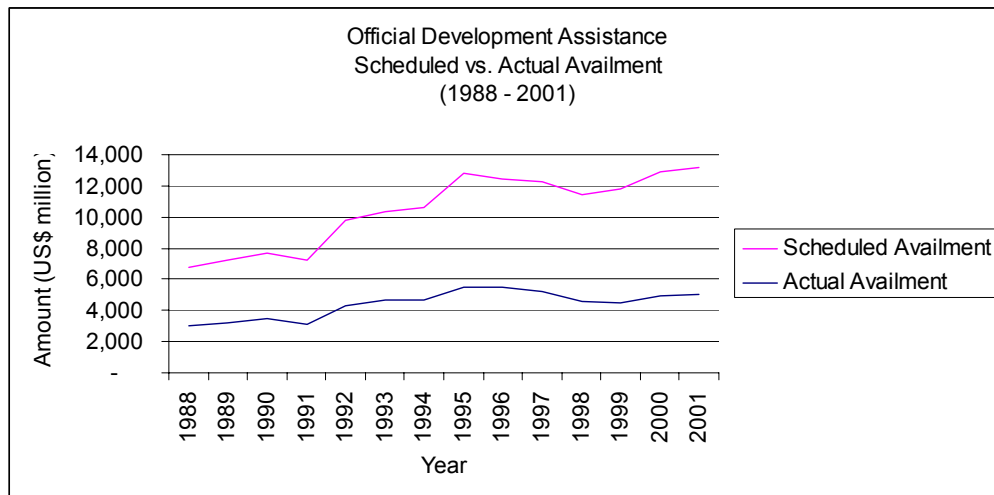
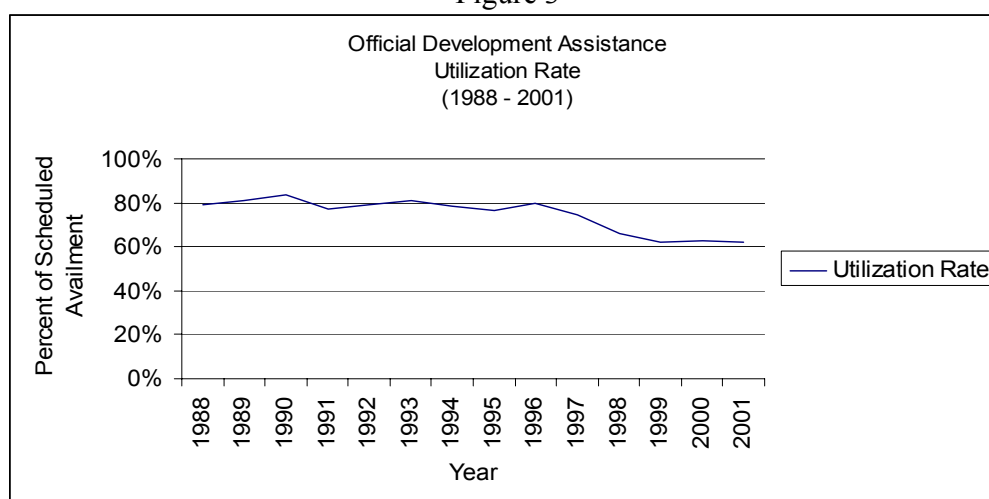


Figure 2 compares the level of scheduled and actual availment of ODA. The graph shows that the gap between the actual and the scheduled level of availment has been widening in the past fourteen years. This may be a telling sign that implementing agencies are inefficient in utilizing available ODA financing, but it could also mean that a number of the government's priority programs and projects are not supported by the funding agencies (i.e., the funding agencies have not identified these projects in their list of preferred programs and projects). To make matters worse, the government pays penalties and fees annually for the undrawn amount. As the gap between funds usage and available financing widens, the penalties and fees that the government pays also increase. The rate at which implementing agencies use up their scheduled ODA financing, *ceteris paribus*, may be connected to their capacity to implement projects efficiently and effectively. The widening gap may be indicative that the institutional capacity of some implementing agencies to carry out their mandates and functions is deteriorating.

Figure 3 complements the previous discussion on ODA availment gap by showing the annual utilization rate of ODA. The graph shows the deteriorating ODA utilization rate through the years, which may be related to institutional inefficiency and ineffectiveness of implementing agencies, the incompetence of agencies and institutions involved in the planning, programming and disbursement of ODA, or the proclivity of financing institutions for certain programs and projects that may be different from the priority programs and projects of the government.

Figure 3



The deteriorating ODA utilization rate needs to be abated so that the country is able to spend the maximum amount of available ODA in any given year to speed up the implementation and completion of its priority programs and projects that redound to national development, economic or otherwise. Moreover, the financing institutions should not prescribe the programs and projects the government should undertake especially when the financing agencies' preferences run contrary to the priorities set in the MTPDP, MTPIP, and IPP. Thus, the government should secure loans and grants that are not tied to the preferences of financing agencies or the technology and services provided by the country of origin of financing institutions. Furthermore, the World Development Report (1997) further states that foreign aid needs to be tied more closely to the recipient country's policies [and programs] in order to be more effective. Moreover, "development is about transforming societies, improving the lives of the poor, enabling everyone to have a chance at success and access to healthcare and education [and] this sort of development will not happen if [international lending agencies and donor countries] dictate the policies [and programs] a country must follow" (Stiglitz 2002). To this end, the government needs more bargaining skills to effect the needed changes in how foreign aid is utilized and maximized.

Project Implementation and Monitoring

The monitoring mechanism employed by the government is biased towards foreign-assisted projects (FAPs), which means that locally funded projects (LFPs) are not accorded with the same scrutiny and attention when it comes to project monitoring and funds usage. Moreover, the procedures for the selection and management of LFPs are less rigorous and less well defined (Systems and Gap Analysis 1997) than those employed for FAPs. This bias is detrimental to the overall implementation of projects because FAPs usually have locally funded counterpart programs and projects. Thus, it is not uncommon to have FAPs that end up not being implemented well due to ill-advised and ill-managed local counterparts. Sometimes the implementing agency of a FAP does not have the capability of operating and maintaining the project once it is complete, which often results in underutilized infrastructure

or worse, unusable facilities due to inadequate resources (institutional capability, financial, or otherwise) for operation and maintenance.

The prevalence of projects with cost overruns also indicates or, at the least, suggests that incentives are perverse (Systems and Gap Analysis 1997). Corruption and fraud are not uncommon in the implementation of large infrastructure projects, and the country's judicial system is weak or ineffective in bringing erring government officials and other parties to court. In a way, the lax implementation of the rule of law does not act as a deterrent to fraudulent activities. The Systems and Gap Analysis Report (1997) also suggests that the PHP300-million threshold for projects is counterproductive because it encourages implementing agencies to fragment projects in order to evade ICC scrutiny. Fragmenting projects in order to evade the PHP300-million rule may result in projects that are never completed because of the inability of the implementing agency to secure the required financing for the next "fragment" of a bigger project. Thus, the ICC project review and approval process, though commendable in theory, is fraught with problems at the project planning and implementation levels.

Trade and Industry

In its drive to become a newly industrializing economy by the year 2000, the Philippine Government, in 1996, created the Industry Development Council (IDC) to formulate policies that rationalize the government's industry promotion and development programs, periodically review and assess the performance of the country's various industries, and recommend to Congress any legislation that contributes to the development of Philippine products (Patalinghug 1997). In theory, the IDC with its emphasis on industrial and investment policies of the government complements the objectives contained in the MTPDP and MTPIP.

To further the country's industrial activities, the Department of Trade and Industry¹⁰ (DTI) leads the domestic investment activities, and the industry and trade promotions of the government. The DTI acts as a catalyst for intensified private sector activity to accelerate and sustain economic growth through a comprehensive industrial growth strategy. The agency also seeks to promote a progressive and socially responsible liberalization and deregulation program, and policies designed for the expansion and diversification of both domestic and foreign trade. With regard to foreign trade, the DTI spearheads the Export Development Council (EDC), which oversees the implementation of the Philippine Export Development Plan (PEDP) and coordinates the formulation and implementation of policy reforms to support the Plan. The EDC is empowered to approve the PEDP; coordinate, monitor and assess the implementation of the PEDP and institute appropriate adjustments in order to adapt to changing conditions in both the domestic and international environments; periodically review and assess the country's export performance, problems, and prospects; identify the main bottlenecks, problem areas and constraints in all areas that influence export development, such as policy framework, physical infrastructure, finance, technology, promotions and marketing; among others. The EDC is an institution that has the potential to enhance the country's capacity to seize the opportunities that may result from increased trade and the coming globalization by involving both government and non-government agencies and institutions in the growth and development of the country's export sector. The IDC and EDC are the Philippines' institutional counterparts to East Asia's "deliberation councils,"

¹⁰ The next section contains a more detailed discussion on the mandate and functions of DTI.

which provide a forum for government policy formulation and implementation, as well as for consensus building (Patalinghug 1997).

Complementing the EDC on the domestic front is the Domestic Trade Development Council (DTDC), created in 1999 under DTI, which takes care of industries left out in the EDC and IDC (Patalinghug 1997). The IDC, EDC, and DTDC are institutions that have been created to ensure that the industrial and trade policies of the country are robust and responsive to the ever-changing global economy and are meant to enhance the Philippine Government's capacity and effectiveness in realizing the gains from freer trade that will come with increasing globalization and at the same time mitigate the negative effects of globalization in the other sectors of the economy.

The three "deliberation councils" are institutions that are capable of enhancing state capability because governments are more effective when they listen to businesses and citizens and work in partnership with them in deciding and implementing policy (World Development Report 1997). But in order for the country to have a coordinated industry and export policy formulation and plan implementation, the IDC and EDC should be merged into one entity that will include all key players in the sector, comparable to Japan's Industrial Structure Council (Patalinghug 1997).

In June 2000, EO 225 was enacted effectively integrating the three industry development councils – EDC, IDC, and DTDC – into the Trade and Industry Development Council (TIDC) in order to remove duplication of work and functions.¹¹ The executive order renamed EDC into TIDC and expanded its mandate and functions by absorbing the functions of IDC and DTDC. The TIDC has the mandate to prepare the Philippine Trade Development Plan (PTDP), and review and evaluate the country's performance with regard to exports, industrial growth and development. Moreover, TIDC is tasked to identify the major problem areas and constraints that affect industry development and the growth and flow of trade. The TIDC is a major step in improving Philippine exports, but in order for the country to benefit from the TIDC the availment of export incentives must have a definite time horizon and must be based on performance (Patalinghug 1992).

A more powerful trade and industry council, such as the TIDC, will have better bargaining skills and influence when it is time for trade negotiations with the World Trade Organization (WTO). To this end, the Federation of Philippine Industries (FPI) has presented Congress with a draft bill that will shore up the country's negotiating skills at the WTO by creating the Office of the Philippine Trade Representative, similar to the influential US Trade Representative's Office.¹² The proposed Office will be tasked to represent and lobby for the country's interests at the WTO in order to effect more favorable outcomes for Philippine industries and products.

Intellectual Property

A related trade and investment activity wherein the government is making some progress is in the protection of intellectual property rights. As a member of the World Intellectual Property Office (WIPO), the Philippines revamped the then Bureau of Patents, Trademarks and Technology Transfer and renamed it the Intellectual Property Office (IPO) to spearhead the country's drive to protect and enforce rules that govern the use and misuse of intellectual property – patents, copyrights, utility models, trademarks, product design and

¹¹ Manila Bulletin, June 12, 2000. "EO consolidates [three] industry councils."

¹² Philippine Daily Inquirer, March 17, 2003. "Wanted: Competent trade negotiators."

patterns, among others. The IPO is tasked to implement the Intellectual Property Code of the Philippines, which “embodies the tides of change in a world where fast development in technologies has become a way of life.”¹³ Such changes pose big challenges to the protection of creative, inventive and innovative ideas, which compelled the IPO to reformulate its vision and mission in order to be a proactive agent of change in the intellectual property trade.

The IPO and its activities are the government’s commitment to the world community that it will uphold and protect intellectual property rights, making it easier for foreign companies to setup subsidiaries in the country without fear that their technology or other intellectual property will be unscrupulously imitated and traded. It is also a way for the country to appease the demands of industrialized economies to protect their inventions and innovations from getting copied without the proper licensing agreements or face dire economic consequences.

The WTO and WIPO are two institutions that the Philippines is signatory to and as such, the country is bound to uphold the rules governing international trade and the protection of intellectual property rights. The Philippines needs a coherent and rational trade policy for it to influence the conduct of trade that affects its citizens, companies, and products in a favorable manner. As a developing country, the Philippines is slow in implementing intellectual property rights because of the relatively high cost of doing business using licensed copies of software and other copyrighted materials and patented equipment. Moreover, the World Development Report (2002) furthers that “the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement can impose significant costs on [developing] countries, because strong patent [and copyright] protection is not as appropriate for them as it is for [industrialized] countries.” Despite the country’s slowness in implementing the rules and enforcing the law that govern the use of intellectual property, laws and rules do exist to protect these and this is a good start for the country to enhance its capacity with regard to enforcing these laws.

Information and Communication Technology

With the advent of computers and networks, the government has embarked on a journey in making government information available and most government services accessible through the Internet, especially through the World Wide Web. The earliest Internet service in the country can be traced back to the Department of Science and Technology’s network in 1994, which connected the country’s eight major institutions of higher learning across the country with the DOST to further research and development among academics and professional scientists in the government. The DOST has been in the forefront of technology research and development, not limited to information and computer technologies, although the application of ICTs has become the one area where the government is making real improvements in the delivery of its services.

The Department of Education (DepEd), in cooperation with private institutions, has embarked to accelerate ICT literacy in public schools to keep up with other emerging economies and in preparation for the imminent globalization. The Philippines needs to beef up its human capital by providing adequate facilities and training to equip Filipinos with, at least, the standard information and communication technology literacy skills that are the main source of competitive advantage in the knowledge age. And by encouraging high school students to develop an interest in ICT through various education and skills programs,

¹³ Taken from the IPO website.

the country increases its chances of establishing a large pool of quality information technology (IT) professionals, which will be handy once globalization reaches the country in full-force.

The National Computer Center (NCC) is the lead agency for promoting and directing the use of ICT in government. With a vision of an e-government, the Philippine Government enacted the E-Commerce Act requiring government agencies and their affiliates to have a functional website in which people can transact business and access information and government services online. The NCC strengthens its support to the government IT sector through its active participation in the passing of the E-Commerce Act, advocacy and building of the knowledge-economy framework of the Philippines, and its continuing research of new and emerging ICT technologies.

The NCC recently conducted an ICT usage survey on national government agencies (NGAs), called the “State of Web Presence of National Government Agencies.” As of March 31, 2003 a total of 379 NGAs have been studied and the results show that 98.4 percent or 373 NGAs have websites, while only 1.6 percent or 6 agencies have no websites. The results of the survey indicate that the government is serious in preparing for the imminent globalization by harnessing the power and potential of ICTs in enhancing its capability to deliver its services to the people, as well as its capacity to implement reforms in the government bureaucracy by adopting systems that streamline its operations, increase people’s participation in the process of public governance, and enhance its transparency and accountability before a more informed and ever-watchful populace. This heightened scrutiny may lead to a better government (World Development Report 1997).

At present, the government website (www.gov.ph) contains almost everything one can know about the Philippine Government. A number of transactions that used to take hours can now be made online, while information that used to be difficult to obtain is now available and accessible on the website. The government’s goal of becoming an e-government is slowly coming into fruition as more and more people who have access to the Internet use its services available online.

Procurement is one area where the government hopes to make a real impact using ICTs. The Government Procurement Act¹⁴ directs all government transactions that pertain to procurement of materials and services to be centralized through a major computer network infrastructure called the Electronic Procurement System (EPS), which represents the Philippine Government’s first step towards electronic procurement practices that will provide both government agencies and suppliers a more open, transparent and competitive environment for the procurement of goods and services by the Government.

The Act is intended to help prevent graft and corruption, improve operational efficiency, foster transparency, and encourage competition in the bidding process. By taking the necessary steps to streamline procurement transactions using real-time systems, the government is able to demonstrate that it has the capacity to facilitate government services and the resolve to improve the transparency of its actions, where and when necessary, to enhance its credibility in order to attract more investments in the country. Information technology has revolutionized the way the government currently conducts its functions and delivers its services because real-time transactions tend to create a sense of urgency in the delivery of government services to those who demand it. This sense of urgency may redound to increased efficiency on the part of the government in order for it to satisfy the demands of

¹⁴ The Appendix contains a more detailed discussion on the Government Procurement Act or RA 9184.

its clients in real-time. The Government Procurement Act is a step towards this end, and one of the many steps that the government needs to take to improve efficiency of its services and enhance the transparency of its actions.

The foregoing agencies and institutions all work together to help the government promote trade and investments in the country and provide an institutional network that is able to seize the opportunities and moderate the threats that are attendant with the coming globalization. One government institution supports this endeavor by making sure that the personnel, intellectual capital and skill requirements of these agencies and institutions are in place even before globalization invades the country in full-force.

Human Resource Development

The Civil Service Commission (CSC) is responsible for the recruitment, development, protection, and retention of a competent, professional, and highly motivated government workforce that is responsive to the needs of the various publics that interact with the government. The CSC is preparing the various agencies and institutions for the impending globalization by providing them with quality and competent personnel with the necessary intellectual and social capital.

The CSC offers local scholarship program for bachelor's degree completion to government employees who were unable to finish a college degree. The program involves a memorandum of agreement (MOA) between CSC and the college or university that the employee would attend to finish the degree, while the scholarship pays the employee's monthly salary even as he or she attends college, as well as full tuition and fees and book allowance. The scholarship carries a return service contract.

Moreover, for government employees who are qualified for higher positions but lack the necessary academic credentials to move up the bureaucracy, the CSC has local scholarship program for master's degree completion. This scholarship program is highly selective because it is a means to reward government employees for exemplary service and behavior. Those who finish a master's degree are almost always promoted upon returning to their respective agencies. The program involves a MOA between CSC and the college or university that the employee would attend, while the scholarship pays the employee's monthly salary even as he or she attends college, as well as full tuition and fees and book allowance. The scholarship comes with a return service contract.

In order to improve its information system and decision-making, the CSC has recently issued a revised Personal Data Sheet form for use in all government offices nationwide. The new form will address the current demands for an integrated human resource management information system that can be used as a tool for decisionmaking affecting career development and personnel actions in the civil service. The revised form calls for a more explicit information on employees' educational background as added space is now provided for particulars on graduate studies, and nondegree courses or those taken aside from tertiary education but not classified as graduate studies. Moreover, space to indicate applicable licenses under the portion of civil service eligibility is provided on top of the usual space for nature, rating, date and place of examination. While previously, only in-service trainings accredited by the CSC were mentioned, training programs conducted by non-CSC accredited institutions may be indicated in the revised data sheet. Space is further provided for non-academic distinctions and recognitions. There is a new portion that would identify if an employee is a member of any indigenous group, a solo parent, or has some physical

limitations. The use of the revised Personal Data Sheet takes effect November 2003 and will strictly be used in and by all government offices nationwide starting 2004.¹⁵

Public Service Professionalism

The CSC conducts several examinations throughout the year to assess the qualifications of current and would-be government employees. The most basic certification test is the subprofessional examination, which establishes eligibility for appointment in government service for those who completed at least two years of tertiary education but were unable to complete a bachelor's degree. The second level qualification involves taking the professional level examination for those who successfully completed a bachelor's degree. Honor students from reputable colleges and universities, as well as those that hold a master's degree, are exempted from taking the professional level examination.

The subprofessional and professional levels are available in both paper-and-pencil test and computer-assisted test. These examinations help establish registers of eligible individuals from which certification and appointment to positions in the first and second levels in government service, except those covered by other examinations as required by law, will be made when vacancies occur, provided such eligible individuals meet the qualifications and other requirements for the positions.¹⁶ Better-qualified government employees may enhance professionalism in the government bureaucracy since formal education and other forms of training on human relations and organizational behavior may lead to professional character, spirit, and methods.

Performance Standards for Management Development

Employee evaluation is conducted semiannually in all government agencies. This is to ensure that all employees are properly motivated to do their work, have the necessary knowledge and skills commensurate to their work and position, and have acceptable job performance and behavior in the past. For management-level positions in government, the CSC conducts more rigorous evaluation and interview for employees that possess the minimum qualifications. The CSC conducts the Career Service Executive Examination to establish a register of eligible individuals for appointment to the Career Executive Service positions. The examination consists of two phases — a written test and an interview.

The Career Executive Service Officer (CESO) Program of the CSC is one mechanism that ensures a high degree of competence and qualifications among civil servants in the highest echelons of the government bureaucracy. The rigorous program is meant to reward exemplary employees who have both the academic requirements and the professional competence to become permanent government executives.

Although the CESO Program is admirable in its intentions to recognize high achievement and commendable performance in government service, it precludes the CSC from firing civil servants with a CESO rank who later become lax and incompetent in their current office. The protection that the CESO affords civil servants from possible dismissal due to incompetence and other causes is also a source of its weakness. It is not uncommon to have government executives that have become incompetent and are no longer useful in their present positions but still continue to be employed by the government because of the tenure that a CESO rank provides.

¹⁵ www.gov.ph

¹⁶ www.gov.ph

Vocational and Technical Training

Complementing the functions of the CSC on a broader scale is the Technical Education and Skills Development Authority (TESDA). The major objective of TESDA is to provide directions, policies, programs and standards towards quality technical education and skill development to all sectors of society. As the leading partner in the development of the Filipino workforce with world-class competence and positive work values, TESDA assists the government in its mission to improve the level of technical competence of the populace, which is useful in moderating the effects of the coming globalization. TESDA plays a crucial role in helping displaced workers (due to the negative impact of globalization on certain sectors) receive the necessary training, learn new skills and acquire knowledge that are important in the global economy.

V. LEGAL AND JUDICIAL FRAMEWORK

While there are no legal or judicial measures that directly bear on globalization, *per se*, there are other legal and judicial measures that bear on economic development and, consequently, globalization.

The present Philippine legal and judicial systems could enable the Philippines to benefit from globalization. However, it must be remembered that the benefits of globalization, in terms of enhanced prospects for development, may not be reaped, and its ills ward off or at least delayed, even with all the proper legal and judicial measures in place, where there is no firm political will.

The Ramos Administration, in 1992, laid the foundations for plans and programs¹⁷ to open up the Philippine market to competition and the implementation of an economic reform agenda through various legislative measures and executive orders aimed at preparing for, coping with, and ultimately benefiting from globalization.

In 1998 the Estrada Administration continued, to some extent, this economic reform with the enactment of laws on general banking, securities regulation, electronic commerce, and safeguard measures against the possible negative impact of globalization. This administration also enacted numerous measures to combat corruption in government. Ironically, however, people power protests and the withdrawal of cabinet, military and police support resulted in the ouster of President Joseph Ejercito Estrada from office, over high-level corruption.

From the first quarter of 2001 to the present, the Arroyo Administration has seen to the implementation of a five-pronged anti-poverty strategy and the promulgation of executive and administrative orders designed to curb corruption, encourage transparency in government transactions, stop money laundering, terrorism, and in fine, make the Philippines an acceptable global partner.

In the judicial and quasi-judicial sphere, new laws relating to the Court of Appeals, the Sandiganbayan, and the National Labor Relations Commission have been enacted and new rules on criminal procedure, electronic evidence, search and seizure in civil action for infringement of intellectual property rights, among others, have been promulgated.

¹⁷ Philippines 2000, Peoples 2000, and the Buklod-Buhay Foundation, Inc.

Relevant Philippine Laws and Regulations

Philippine economic development, or nondevelopment, is not happening in a vacuum, but in an increasingly global economy. With news, business, technological, and social developments being reported worldwide as it happens or as soon as it happens, quick responses to world events have become more necessary than ever.

Over the past 18 years, the Philippine government has passed executive and legislative initiatives to spur and protect economic development and, it is to be hoped, to respond to globalization's challenges. At the very least, the Philippines needs to be perceived as a country where business may be conducted without the added costs and barriers created by corruption.

Reforms were introduced through demonopolization of public utilities, privatization of state enterprises, reduced state intervention in the market, trade and investment liberalization, service industry deregulation, taxation reform, tariff reduction and/or elimination, monetary and fiscal reforms, anti-poverty and anti-corruption measures, and improvement of peace and order and administration of justice.

Taxation, Monetary and Fiscal Measures

Significant taxation, monetary and fiscal measures have been adopted:

- Tax treaties for the avoidance of double taxation and prevention of fiscal evasion, have been entered into with 34 countries, to date, Australia, Austria, Belgium, Brazil, Canada, China, Czech Republic, Denmark, Finland, France, Germany, Hungary, Indonesia, India, Israel, Italy, Japan, Korea, Malaysia, Netherlands, New Zealand, Norway, Pakistan, Romania, Russia, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Thailand, United Kingdom, and the United States of America
- Increased penalties for tax evasion and violations of the provisions of the National Internal Revenue Code (Republic Act No. 7642)
- The Tax Reform Act of 1997 (Republic Act No. 8424), for the simplification of income and excise taxation in order to improve tax collection efforts. Unfortunately, however, the political intervention of Congress and private vested interest groups so diluted The Tax Reform Act of 1997 that the taxation system under the new law still remains very complicated and improvements in tax collection have yet to be realized
- Rationalization of the documentary stamp tax system (Republic Act No. 7660)
- The imposition of taxes for sale of shares of stock through the stock exchange or through initial public offerings (Republic Act No. 7717)
- Law on Expanded Value-Added Tax (Republic Act No. 7716)
- Lifting of foreign exchange restrictions, allowing the market to freely trade in foreign currencies (Central Bank Circular No. 1389, Consolidated Foreign Exchanges Rules and Regulations) and allowing the sale of foreign exchange receipts, acquisitions, or earnings for pesos outside the banking system or to unauthorized agent banks, and retention or deposit in foreign currency accounts in the Philippines or abroad, or use for any other purpose (BSP Circular No. 5, s. 1993)
- Express repeal of the Uniform Currency Law (Republic Act No. 529) which restricted parties to a contract to deal only in Philippine Peso in order to settle monetary obligations (Republic Act No. 8183)

- The General Banking Law of 2000 (Republic Act No. 8791)
- Regulations to Implement Section 16 Art XI of the Constitution “No loan, guaranty, or other form of financial accommodation for any business purpose may be granted, directly or indirectly, by any government-owned or controlled corporation or financial institution to the President, Vice President, the members of the Cabinet, the Congress, the Supreme Court, and the Constitutional Commissions, the Ombudsman, or to any firm or entity in which they have controlling interest, during their tenure.” (BSP Circular No. 195 s.1999)
- The Securities Regulation Code (Republic Act. No. 8799)
- Punishment of money laundering, with the promulgation of The Anti-Money Laundering Act of 2000 (Republic Act No. 9160, as amended by Republic Act No. 9189)
- Creation of the Anti Money-Laundering Council and enactment of Implementing Rules and Regulations of Republic Act No. 9160 (BSP Circular No. 333, s.2002)

These reforms were aimed at improving and strengthening the legal and regulatory infrastructure for doing business in the Philippines. More specifically, taxation, foreign exchange, and securities regulation were revised supposedly to bring these closer to global standards. Some reforms were meant to ease restrictions on business. Others were meant to ensure a more predictable legal regime with stricter enforcement against criminality and corruption. For example, the Anti-Money Laundering Act was an important milestone in securing the international credibility of the Philippine financial system. The law was intended to remove the Philippines from the international watch list of countries involved in money laundering.

However, in the end, these new laws and regulations will only be as effective as their actual implementation and this will depend on honest-to-goodness political will.

Peace and Order and the Administration of Justice

The Arroyo Administration has recognized that poverty directly affects the peace and order situation of the country, and that it is imperative to alleviate poverty even while improving the country’s competitiveness and capacity to respond to the challenges of globalization. The 2001-2004 Medium-Term Philippine Development Plan includes an anti-poverty strategy.

Various legislations aimed at fighting corruption and cronyism, improving law enforcement mechanisms, and the judiciary and administrative agencies exercising quasi-judicial functions were enacted:

- Expansion of the jurisdiction of the Court of Appeals (Republic Acts Nos. 7902 and 8246)
- Strengthening of the functional and structural organization of the Sandiganbayan (Republic Acts Nos. 7975 and 8249)
- Vesting of concurrent jurisdiction in the first, second and third division of the National Labor Relations Commission (Republic Act No. 7700)
- Expansion of the jurisdiction of the first, second and third division of the National Labor Relations Commission (Republic Act No. 7691)
- Strengthening of the operational, administrative and information support system of the Philippine Center on Transnational Crime (Executive Order No. 100, s. 1999)
- Philippine National Police Reform and Reorganization Law (Republic Act No. 8351) uplifting of the image of the Philippine National Police

- The establishment of the Presidential Anti-Crime Commission¹⁸ (Executive Order No. 3 s. 1992)
- The reorganization of the Peace and Order Council (Executive Order No. 309 s. 1987), as amended
- The Jakarta Agreement of 1996 creating the Southern Philippines Council for Peace and Development (SPCPD) in Mindanao
- Court Rules on Electronic Evidence, effective 01 August 2001, implementing Republic Act No. 8792, Electronic Commerce Act (A.M. No. 01-07-01-SC)
- EO 268 (s. 2000) Creating the National Anti Corruption Commission
- Revised Rules of Criminal Procedure, as amended (Rules 110-127), 01 December 2000
- Prohibiting Public Officers and Employees from entering into certain kinds of official transactions with real, pretended or imaginary relatives of the President (Administrative Order No. 1, s. 2001)
- Creating the National Anti Crime Commission and Other Purposes (Executive Order No. 223, s. 2001)
- Reorganizing and Extending the Life of the Special Task Force Created Under Executive Order No. 156 dated 07 October 1999, entitled “Creating a Special Task Force to Review, Investigate and Gather Evidence Necessary to Successfully Prosecute Irregularities Committed at the BIR and Other Government Offices and Agencies under or attached to the Department of Finance (Executive Order No. 38, s. 2001)
- Creating an Anti-Smuggling Intelligence and Investigation Center to Investigate and Interdict Smuggling and Other Acts Contrary to the Tariff and Customs Code of the Philippines (Executive Order No. 155, s. 2003)
- Alternative Law Groups (ALG), a coalition of public interest law groups providing legal assistance in issues of justice concerning women, labor, the urban poor, farmers, migrant workers, and the underprivileged
- Philippine Judicial Academy (PHILJA), an institution providing judicial education and alternative dispute resolution
- Justice Reform Initiatives Support (JURIS) Project, a five-year C\$7 million Philippines-Canada bilateral project, launched in 2003 and funded by the Canadian International Development Agency, to support the Supreme Court’s Action Program for Judicial Reform and strengthen the “access to justice” of civil society. The project brought together the Supreme Court, PHILJA, the Program Management Office, the Office of the Court Administrator, and the ALG

Not only does the Philippines have so many laws, rules and regulations it, also, has numerous general and industry-specific agencies enforcing the foregoing laws, rules and regulations.

- National Library, for copyright registration
- Department of Trade and Industry (DTI) and its attached agencies including, Bureau of Trade Regulation and Consumer Protection (BTRCP), Bureau of Food and Drugs (BFAD), Bureau of Patents, Trademarks and Technology Transfer (BPTTT), Bureau of Product Standards (BPS), for consumer welfare and protection
- Securities and Exchange Commission (SEC), supervision and monitoring of stock and nonstock corporations, including the resolution of intra-corporate disputes, and the

¹⁸ Now defunct and discredited, with the ouster of President Joseph Ejercito Estrada

regulation of all forms of securities, brokers and dealers, financing companies and investment houses

- Philippine Economic Zone Authority (PEZA), for economic zone developers and economic zone registered enterprises
- Bases Conversion and Development Authority (BCDA), for the administration development of former military bases, other than Subic and Clark, and BCDA-registered enterprises
- Subic Bay Metropolitan Authority (SBMA), for administration development of the former American Subic Naval Base and SBMA-registered enterprises
- Clark Development Corporation (CDC), for administration development of the former US Clark Air Base, and Clark-registered enterprises
- Bangko Sentral ng Pilipinas (BSP), for banks and financial institutions
- Insurance Commission (IC), for insurance companies
- Philippine Tourism Authority (PTA), for the tourism industry
- Housing and Land Use Regulatory Board (HLURB), for land use and real estate development
- National Food Authority (NFA), for rice, corn, wheat and other grains and food stuffs
- Sugar Regulatory Administration (SRA), for the sugar industry
- Philippine Coconut Authority (PCA), for the coconut industry
- Garments and Textile Export Board (GTEB), for garment manufacturers and exporters
- Board of Investments (BOI), for pioneer or nonpioneer industries and those listed in the Investments Priorities Plan, availing of the incentives under the Omnibus Investments Code
- National Telecommunications Commission (NTC), for telecommunications companies
- Land Transportation Franchising and Regulatory Board (LTFRB), for common land carrier
- Civil Aeronautics Board (CAB), for companies engaged in air commerce
- Maritime Industry Authority (MARINA), for the shipping industry
- Philippine Ports Authority (PPA), for port operators and arrastre services
- Department of Energy (DOE), Energy Regulatory Commission (ERC), and the National Power Corporation (NPC), for power generation companies and oil companies

It is heartening to see that the Philippine Government is serious about curbing and eradicating corruption and other crimes that affect its credibility and capability as a participant in global economic development. It would also appear that with so many measures, in addition to the basic laws like the Philippine Constitution, the Civil Code of the Philippines, and the Revised Penal Code, the Philippines should be well equipped to curb corruption and other crimes.

However, these pluralities of laws and enforcement agencies have created their own problems. Responsibility is too diffused and accountability for implementation of the laws is difficult to locate or fix. For instance, the Philippine antitrust laws need to be reformed. No agency implements the laws or prosecutes firms. The country has similar antitrust laws as the US but Philippine antitrust laws are in the Revised Penal Code, unlike US antitrust laws which are in the US Constitution and well developed through jurisprudence and quasi-judicial decisions. Thus, certain anti-competitive and corrupt practices can only be

prosecuted in the criminal courts, a long and tedious process that is impractical and useless to the business world where time is often of the essence.

Finally, the general lack of court resources and judges' training in these new laws hinder court proceedings, thus undermining outcomes.

Trade and Foreign Investment Liberalization

The first real barriers to any market are tariffs and other nontariff structures, such as quantitative or import restrictions. For this reason, most of the bilateral and multilateral trade agreements impose the observance of reduced tariff rates.

The Tariff Reform Program is currently being implemented to reduce tariffs and remove quantitative restrictions.

In compliance with international commitments, various tariff rates for a number of industrial and agricultural products in the Philippines have either been reduced and/or modified through the issuance of Executive Orders.¹⁹ By 2001, the simple average nominal tariff rate was down to 7.7 percent from 13.4 percent in 1997.

Additionally, though, Congress enacted Republic Act No. 8178 to remove quantitative restrictions on agricultural products, significant nontariff barriers remain. To illustrate: sensitive agricultural products, such as live animals, fresh, chilled or frozen beef and other meats, potatoes, coffee, corn, and sugar, are subject to minimum access volume tariff rate quotas until 2005. Increased protection of agricultural products resulted. On a positive note, the government has moved to privatize rice importation, but the process has been slow.

With respect to tariff reduction, the hoped-for response of Philippine industries to restructure themselves into more globally competitive enterprises has not substantially materialized. The inflow of foreign investments resulted in the appreciation of the Philippine peso. This together with tariff reduction made the import-dependent sector of Philippine industries uncompetitive, while penalizing the export-oriented sector. Consequently, Philippine industries were not impelled to become competitive as the appreciation of the peso provided windfall profits to Philippine industries in the non-tradable sectors, such as real estate industry.

The unexpected strength of the peso also encouraged Philippine industries to fund long-term peso project with short-term US dollar loans. The result has been the Asian financial crisis, which wreaked havoc on the financial health of a substantial sector of the economy. The irony is that the sharp devaluation of the peso has made Philippine industries globally competitive, if only they could have the resources to seize the opportunities presented.

Measures to ensure more efficient collection of tariffs have also been enacted. Republic Act No. 7650 amended the provisions of the Tariff and Customs Code on physical examination of imported articles particularly Section 1401 and 1403, and repealed Section 1404. Congress also enacted Republic Acts Nos. 8181 and 9135 to shift the basis for the computation of duties from home consumption value to transaction value, which is the global standard for customs valuation.

¹⁹ EO No. 1 (1992), EO No. 2 (1992), EO No. 8 (1992), EO No. 79 (1993), EO No. 94 (1993), EO No. 106 (1993), EO No. 115 (1993), EO No. 116 (1993), EO No. 145 (1993), EO No. 146 (1993), EO No. 147 (1993), EO No. 148 (1993), EO No. 153 (1994), EO No. 160 (1994), EO No. 172 (1994), EO No. 173 (1994), EO No. 189 (1994), EO No. 204 (1994), EO No. 227 (1995), EO No. 237 (1995), EO No. 264 (1995), EO No. 287 (1995), EO No. 288 (1995), EO No. 313 (1996), EO No. 328 (1996), and EO No. 163 (1999).

As a safety net measure, or to safeguard against the dumping of foreign products in the Philippines, Republic Act No. 7843, also known as the Anti-Dumping Act of 1994, was enacted to rationalize and strengthen the provisions on anti-dumping in the Tariff and Customs Code.

Additionally, Republic Act No. 8800, otherwise known as The Safeguards Measures Act, was enacted to allow tariffs to be raised temporarily so that qualified domestic industries could have time to undergo rehabilitation that would enable them to compete with imports coming in as a result of liberalization under the World Trade Organization agreements. Applications for protection under The Safeguards Measures Act are filed with the Department of Trade and Industry for nonagricultural industries and the Department of Agriculture for agricultural industries.

To liberalize the entry of foreign investments, Republic Act No. 7042, otherwise known as the Foreign Investments Act (FIA), was passed. Republic Act No. 8179, amended the FIA, to allow foreign corporations which are 100 percent Filipino-owned to do business in the Philippines as a Philippine national,²⁰ to allow domestic market enterprises to immediately change their status to export-oriented enterprises,²¹ to delete Negative List C which reserved certain areas of business to Philippine nationals,²² and to grant former natural-born Filipinos the same investments rights as Filipino citizens in cooperatives, rural banks, thrift banks and private development banks, and financing companies,²³ and ownership of private lands.²⁴

The Omnibus Investment Code, Executive Order No. 226, was also amended to conform to the current economic agenda. With Republic Act No. 7888, the BOI was granted the power to recommend to the President of the Philippines the suspension of the nationality requirements, to the extent allowed by the Constitution and relevant laws, in cases of ASEAN projects, investments by ASEAN nationals, regional ASEAN or multilateral financial institutions in preferred project and/or projects allowed through either financial or technical assistance agreements entered into by the President or in case of regional complementation for the manufacture of a particular project which seeks to take advantage of economies of scale.²⁵

Republic Act No. 7918 amended the Omnibus Investments Code to rationalize and qualify incentives enjoyed by BOI-registered enterprises. The tax and duty exemption on imported capital equipment and spare parts and tax credit on domestic equipment were restricted by limiting the period when enterprises may avail of such incentives. The exemption from contractor's tax was also deleted.²⁶

Republic Act No. 7918, as amended by Republic Act No. 8756, provided for the terms, conditions and licensing requirements of regional or area headquarters, regional operating headquarters, and regional warehouses of multinational companies.

A major component for attracting foreign investments was the establishment of Special Economic Zones (SEZs). Subic Naval Base was converted into the Subic Bay Free

²⁰ RA No. 7042 (1991), Sec. 3

²¹ RA No. 7042 (1991), Sec. 7

²² RA No. 7042 (1991), Sec. 8

²³ RA No. 7042 (1991), Sec. 9

²⁴ RA No. 7042 (1991), Sec. 10

²⁵ EO No. 226 (1987), Article 7 (13), as amended by Rep. Act No. 7888 (1995).

²⁶ EO No. 226 (1987), Article 39, as amended by Republic Act No. 7918 (1995).

Port and Special Economic Zone, Clark Air Base was converted into Clark Special Economic Zone, and other former US military bases were converted into SEZs, under Republic Act No. 7227. SEZs were also created in Zamboanga under Republic Act No. 7903 and in the municipalities of Sta. Ana and neighboring islands of Aparri, Cagayan under Republic Act No. 7922. More SEZs have been sought to be created under Republic Act No. 7916, which provided for the legal framework and mechanics in the creation, operation, administration and coordination of SEZs and the organization of the Philippine Economic Zone Authority (PEZA), which succeeded the now-defunct Export Processing Zone Authority (EPZA).

The disqualification of foreigners from owning land in the Philippines has, to some extent, discouraged investors from coming in. To address the situation, Republic Act No. 7652 was enacted to allow foreign investors to lease, but not own, private lands in the Philippines for a period not exceeding 75 years for the purpose of engaging in business.

Republic Act No. 7844 gave the policy framework to support export development,²⁷ provide for the formulation of the Philippine Export Development Plan,²⁸ and grant other incentives to export-oriented enterprises such as exemption from Presidential Decree No. 1853, zero-rated duty for importation of machinery and equipment, tax credit and long-term credit facilities.²⁹ The Export and Investment Development Council was later reorganized into the Export Development Council through Executive Orders Nos. 98 (s. 1993), 110 (s. 1993) and 180 (s. 1994).

Other significant trade and investment liberalization measures are:

- Liberalization of the service industries, i.e. Republic Act No. 7721 allowing the entry of more foreign banks, Republic Act No. 7718 expanding the contractual arrangements allowable under the Build-Operate-And-Transfer law, Republic Act No. 7942 providing for greater incentives in mining, and Republic Act No. 8366 liberalizing the investment houses industry, and the granting of congressional franchises to new players in the civil aviation, telecommunications and televisions and radio broadcasting industries
- Book industry – Republic Act No. 8047
- Agriculture and fisheries – Republic Act No. 8435
- Jewelry manufacturing – Republic Act No. 8502
- Small- and medium-scale enterprises – Republic Act No. 8289
- Financing companies – Republic Act No. 8556
- Public utilities sector deregulation – Executive Order Nos. 185 (s. 1994) and 213 (s. 1994) which relaxed rules on the entry of new shipping operators and the deregulation of domestic shipping rates, Executive Order No. 212 (s. 1994), which demonopolized government ports, Executive Order Nos. 59 (s. 1993) and 109 (s. 1993) which paved the way for the entry of new telecommunications firms, Republic Act No. 7925 which allowed the operation of Value-Added Service providers (*e.g.*, internet and electronic data interchange network operators) without need of a legislative franchise, Executive Order Nos. 215 (s. 1987) and 462 (s. 1997) which promoted private sector participation in the business of generating electricity and in the exploration, development, utilization and commercialization of ocean, solar and wind energy resources for power generation

²⁷ RA No. 7844 (1994), Sec. 3

²⁸ RA No. 7844 (1994), Sec. 5

²⁹ Republic Act No. 7844 (1994), Sec. 16. Pres. Decree No. 1853 (1982) requires the deposit of duties at the time of opening of letters of credit covering imports.

and other energy uses, respectively, and Republic Act No. 8479, which provided for the deregulation of the downstream oil industry

- Intellectual Property Code of the Philippines (Republic Act No. 8293)
- Protection of layout designs or topographies of integrated circuits (Intellectual Property Code of the Philippines, as amended by Republic Act no. 9150)
- Court Rules on Search and Seizure in Civil Action for Infringement of Intellectual Property Rights (A.M. No. 02-01-06-SC)
- Electronic Commerce Act (Republic Act No. 8792)
- The Securities Regulation Code (Republic Act No. 8799)
- Establishing the Information Technology and Electronic Commerce Council (ITECC), from the merger of the National Information Technology Council and the Electronic Commerce Protection Council (Executive Order No. 264, s. 2000)
- Rules on the submission, review and approval of government contracts (Administrative Order No. 7, s. 2001)
- Streamlining the Rules and Procedures on the Review and Approval of All Contracts of departments, Bureaus, offices, and Agencies of the Government, including Government-Owned or Controlled Corporations and their Subsidiaries (Executive Order No. 109, s. 2002)
- An Act Establishing the Philippine Quality Award in Order to Encourage Organizations in Both the Public and Private Sectors to Attain Excellence in Quality and in the Production and/or Delivery of Their Goods and Services (Republic Act No. 9136)
- Electric Power Industry Reform Act of 2001
- Consolidating Procurement Rules and Procedures for all National Government Agencies, Government-Owned or -Controlled Corporations and Government Financial Institutions, and Requiring the Use of Government electronic Procurement System (Executive Order No. 40, s. 2001); Department of Budget Management Rules and Regulations Implementing Executive Order No. 40, s. 2001 (28February 2002)
- An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and For Other Purposes (Republic Act No. 9184)
- An Act to Promote the Establishment of Barangay Micro Business Enterprises (BMBEs), providing incentives and benefits therefore, and for other purposes (Republic Act No. 9178)
- EO No. 156 (s. 2003) Providing for a Comprehensive Industrial Policy and Directions for the Motor Vehicle Development Program
- Further Enhancing the Speedy Resolution of Appealed Cases in the Office of the President and Increasing the Number of Authorized Officials to sign “By Authority of the President” for this purpose (Office of the President Memorandum Order No. 81, s. 2003)
- Institutionalizing the “*Isang Bayan, Isang Produkto, Isang Milyong Piso*” Program to Stimulate Local Economic Activity (Executive Order No. 176, s. 2003)
- Providing For the Establishment of Greater Manila Mass Transport System (Executive Order No. 179, s. 2003)
- Omnibus Guidelines for the Issuance of Employment Permits to Foreign Nationals, as amended by Department of Labor and Employment Dept. Order No. 41, s.2003 (DOLE Dept. Order No. 12, s. 2001)

- Liberalization of the Retail Trade Business, repealing Republic Act No. 1180, as amended, allowing under certain conditions 100 percent foreign ownership of a retail trade enterprise (Republic Act No. 8762)

As may be noted from the foregoing enumeration, the imperatives of global competition have benefited various service industries, including the stock market, banking, insurance, infrastructure, book publishing and mining, among others, through the deregulation reforms instituted.

Changes under the Securities Regulation Code improve listing requirements and insider trading sanctions. The new law also offers better protection to minority shareholders through mandatory tender offers and deterrence of market abuses and fraud through the prohibition of insider trading, affiliated broker and dealer transactions and segregation of broker and dealer functions. However, enforcement of insider trading rules has proven difficult. While investigation of cases has been ongoing for some time, no one has ever been prosecuted. Failure to resolve cases such as that of BW Resources downgrades investor confidence in the country's stock market.

In banking, the basic preparation for change was effected through the reorganization of the Central Bank of the Philippines into the Bangko Sentral ng Pilipinas (BSP), under Republic Act No. 7653. The BSP continues to play a stabilizing force in the entire economy. Three major laws were enacted to enhance competition in banking:

- Republic Act No. 7906, which provided for the regulation of the organization and operations of thrift banks
- Republic Act No. 7721, which liberalized the entry of foreign banks in the Philippines by allowing foreign equity ownership of up to 60 percent³⁰ of the voting stock of existing domestic banks or the incorporation of a new subsidiary in the Philippines, and the entry of new foreign bank branches with full banking authority and more importantly
- Republic Act No. 8791, or The General Banking Law of 2000, which clarified the BSP's prudential responsibilities, imposed tough criteria on bank auditors, consolidated banking supervision, formally adopted risk-based capital requirements, increased allowable foreign ownership of local banks to fully-owned (i.e., 100 percent owned), clarified the legal basis for determining unsafe bank practices, and increased bank transparency and disclosure standards.

With The General Banking Law, the country is now at the forefront of international prudential banking standards, in as far as legislation goes. Though, the actual implementation of bank supervision is still lacking in some areas. However, retail banking is still closed relatively to new foreign bank entrants. Freer entry of foreign financial institutions could strengthen competition, corporate governance, and banking industry standards. The privatization and public listing of government banks would help disperse bank holdings and promote efficiency.

In the insurance industry, the entry of foreign insurance and reinsurance companies or intermediaries was encouraged through various initiatives from the Executive department. With Department of Finance Order No. 100-94, issued on 24 October 1994, several

³⁰ This percentage was increased under The General Banking Law of 2000, Republic Act 8791.

multinational insurance companies have already entered the Philippine market, such as AIG, and Prudential.

The Ramos Administration recognized the inadequacy of government resources to meet all of the public's infrastructure requirements. Accordingly, it supported the amendment of Republic Act No. 6857, otherwise known as the Build-Operate-and-Transfer (BOT) Law, which allows the private sector to participate in infrastructure and development projects ordinarily undertaken exclusively by government. Private sector participation was further enhanced with the enactment of Republic Act No. 7718 by expanding the contractual arrangements that may be entered into by a government implementing agency and a private proponent.

Republic Act No. 8047 provided for the development of the book industry through the formulation and implementation of a national book policy³¹ and national book development plan³² and the creation of a National Book Development Board (NBDB).³³ Under the law, persons or entities engaged in publishing and registered with the NBDB may avail of incentives provided under the Omnibus Investments Code, subject to the qualifications and requirements set by the BOI. Moreover, books, magazines, periodicals, newspapers, and book publishing and printing, distribution and circulation are exempt from the coverage of the Expanded Value Added Tax.³⁴

Republic Act No. 7942, or the Philippine Mining Act of 1995, provided for the requirements and incentives for the exploration, development, utilization and conservation of mineral resources.

In the area of public utilities, Executive Order No. 185 (s. 1994) was adopted to foster competition through more liberalized rules on the entry of new operators for existing routes presently serviced by one operator,³⁵ new operators of development routes,³⁶ the deregulation of the entry of newly-acquired vessels into routes already served by franchised operators,³⁷ and vessel rerouting or amendment of authorized route and change in sailing schedules and frequency.³⁸

Executive Order No. 213 (s. 1994) provided for the deregulation of domestic shipping rates in the following areas: (a) first and second class passage rate for passenger-carrying domestic vessels,³⁹ (b) passage rates for vessels catering to tourism as certified by the Department of Tourism or those serving DOT-certified tourist priority links/areas,⁴⁰ (c) freight rates for all commodities classified as Class "A" and "B" and "C", except for non-containerized basic commodities, and where the route/link is still being serviced by only one operator.⁴¹

³¹Republic Act No. 8047 (1995), Sec. 4

³²Republic Act No. 8047 (1995), Sec. 5

³³Republic Act No. 8047 (1995), Sec. 7

³⁴Republic Act No. 8047 (1995), Sec. 12

³⁵Executive Order No. 185 (1994), Sec. 1.1

³⁶Executive Order No. 185 (1994), Sec. 1.2

³⁷Executive Order No. 185 (1994), Sec. 1.3

³⁸Executive Order No. 185 (1994), Sec. 1.4

³⁹Executive Order No. 213 (1994), Sec. 1(1)

⁴⁰Executive Order No. 213 (1994), Sec. 1(2)

⁴¹Executive Order No. 213 (1994), Sec. 2

Two new airline companies (Pacific Airways Corporation, Republic Act No. 7909) and All Asia Airlines Company, Republic Act No. 8103) were granted congressional franchises to provide air transport services.

Moreover, by virtue of Executive Order No. 219 (s. 1995), international civil aviation was sought to be liberalized through the designation of at least two official carriers for the Philippines, and the possibility of designating other carriers as official carriers when the total frequency requirements of the Philippines under its various Air Services Agreement cannot be fully serviced by the first two designated official carriers.⁴² Philippine Air Lines (PAL) and Cebu Pacific have been designated as designated official carriers.

Since 1999, frequency of flights and capacities has been increased, in particular for Korean Air, Singapore Airlines, Emirates, Gulf Air, and Qatar Airways. The RP-US Air Transportation Agreement (ATA), signed in 1992, provides unlimited frequency of flights and seats between the two countries. However, PAL has succeeded in delaying implementation for five times already since 1996. The ATA is now scheduled to be implemented beginning 01 October 2003. Cebu Pacific has publicly declared that it has no objections to the implementation of the ATA.

For domestic air transportation, a minimum of two operators in each route/link is encouraged, and for routes/links presently serviced by only one operator, additional operators are likewise encouraged to enter.⁴³ Passage rates for routes/links serviced by more than one operator is no longer regulated but merely monitored by the Civil Aeronautics Board (CAB). Passage rates for routes/links serviced by single operators remain regulated by the CAB.⁴⁴

In order to accelerate the demonopolization and privatization program for government ports, Executive Order No. 212 (s. 1994) was issued. Competition is encouraged in the provision of cargo handling and other port services. Under the government's demonopolization program, ship owners, operators, charter parties or other users have the option to contract or engage the services of the Philippine Ports Authority (PPA) authorized handler or port service contractor of their choice.⁴⁵ Under the privatization program, private sector participation in the operation, maintenance and development of government ports is encouraged through capital leases, cargo licenses, and service contracts to private companies to carry out cargo handling, dredging, port security and other services.⁴⁶ The PPA is directed to ensure that free access to the ports is allowed to all sectors of the industry and that there shall be no discrimination in the provision and availment of service contracts.⁴⁷

In no other area has there been a greater display of political will than in the successful breaking up monopolies and cartels in telecommunications. Executive Order No. 59 (s. 1993) required mandatory interconnection for other telecommunications firms with the Philippine Long Distance Telephone Company (PLDT) backbone.

Executive Order No. 109 (s. 1993) laid down the government's policy to improve the Local Exchange Carrier Service. Authorized international gateway operators were required to provide local exchange service in served and unserved areas, including Metro Manila, within three years from the grant of authority from the National Telecommunication Commission.⁴⁸

⁴²Executive Order No. 219 (1995), Sec. 1

⁴³Executive Order No. 219 (1995), Sec. 2.1

⁴⁴Executive Order No. 219 (1995), Sec. 2.2

⁴⁵Executive Order No. 212 (1994), Sec. 1

⁴⁶Executive Order No. 212 (1994), Sec. 2

⁴⁷Executive Order No. 212 (1994), Sec. 4

⁴⁸Executive Order No. 109 (1993), Sec. 5

Republic Act No. 7925, entitled "An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunications Services," was enacted to provide a comprehensive guideline regulating the public telecommunications industry in the Philippines.

These measures have been met with enthusiasm. New telecommunications companies have entered the market, like Digital Telecommunications Philippines, Inc., Bell Telecoms, IslaCom, Major Telecoms, which were granted congressional franchises to install, operate and maintain telecommunication system throughout the Philippines, and Island Paging, Inc., Multi Media Telephony, Inc., which were granted radio-paging franchises.

The power crisis of the recent past debilitated the economy. To address the situation, the Ramos Administration secured the enactment of Republic Act No. 7648, which granted the President emergency powers, for a period of one year from effectivity of said law, to enter into negotiated contracts for the construction, repair, rehabilitation, improvement or maintenance of power plants, projects and facilities, to fix the rate of return on rate base of the National Power Corporation (NPC) to not more than 12 percent, and to reorganize the NPC. The law encouraged the entry of foreign power firms and the execution of various power contracts.

In addition, Executive Order No. 215 (s. 1987) was issued to promote private sector participation in the business of generating electricity. Republic Act No. 8180, which provides for the deregulation of the oil industry, was also recently enacted.

However, in both the telecommunications and power distribution sectors, family-owned monopolies would be difficult to break and powerful commercial interests could influence regulatory bodies. For instance, Globe Telecoms (Ayala Group) and Smart Communications (Metro Pacific Holdings Group) virtually simultaneously announced a 60 percent reduction of free short messaging services. When the legality of said reduction was questioned, the National Telecommunications Commission issued a temporary restraining order, but the order was lifted almost immediately allegedly because of lack of sufficient evidence.

Another crisis, this time in the water sector, prompted the enactment of the Water Crisis Act, Republic Act No. 8041. Like in the power crisis act, the President was conferred emergency powers to enter into negotiated contracts for water supply and distribution projects under the BOT or related schemes. The President's authority to negotiate, however, expired on 15 July 1996 without any such contract being finalized. The same law provided for the privatization of the Metropolitan Water and Sewerage System (MWSS). In this regard, Executive Order No. 311 (s. 1996) was issued to encourage private sector participation in the operations and facilities of the MWSS. In 1997, the government engaged in its largest privatization effort with the sale of the MWSS to private corporations, Manila Water Corporation and Maynilad Water Corporation, which are now servicing Metro Manila.

Government participation in commercial enterprises discourages the entry of private entrepreneurs in the market. For this reason, the government has long adopted a policy to privatize GOCCs as early as 1986 under Proclamation No. 50 and 50-A, which created the Committee on Privatization and the Asset Privatization Trust. The same laws remain effective through several extensions effected by Republic Acts Nos. 7181, 7661 and 7886.

The efforts at divestment of some government assets have proven difficult to market. For this reason, Executive Order No. 298 (s. 1996) was issued by the President to provide for

alternative and/or intermediate modes of privatization through joint ventures, BOT and related schemes, management contracts, lease purchase arrangements and securitization.

Finally, notable by its absence, is the lack of effective antitrust legislation in the Philippines. In fact, in the region, only the Philippines and Vietnam have yet to recognize the need to establish effective antitrust legislation and regulatory agencies. Philippine markets lack competition, with diverse, horizontal and vertical family-owned conglomerates and large government-owned or -controlled firms. The top five families control approximately 43 percent of total listed corporate assets, the highest in East Asia. Philippine conglomerates operate in a wide range of industry sectors. For instance, the Ayala Group of Companies has 48 companies controlling real estate, local telecommunications, agribusiness, food, and industrial businesses. On the other hand, the government owns and manages 179 companies engaged in agriculture, railways, power, water, technology, and banking and finance. For instance, the government-owned Development Bank of the Philippines may be directed to lend to other government-owned firms and increase the risk of poor investments.

Property Rights

Commercial Law in the Philippines is based on Competition Law (1906), Negotiable Instruments Law (1911), Warehouse Receipts Act (1912), Insolvency Law (1909), Presidential Decree No. 902-A (1976), Presidential Decree No. 1758 (1981), and Securities Regulation Code (2000). The latter specifies that Regional Trial Courts decide whether ailing corporations, partnerships, or associations be given relief, rehabilitated, or dissolved. A mortgage can be foreclosed judicially (through RTC) or extrajudicially (the mortgagee can foreclose on the mortgaged property upon default of the debtor). However, the judicial foreclosure process takes time and is costly to both debtors and creditors. On the other hand, the extrajudicial foreclosure process can easily be transformed into a judicial process at the insistence of any interested party (ADB 2003).

The Corporation Code and Securities Regulation Code contain several provisions dealing with the protection of public investors and minority shareholders. However, weak enforcement makes minority shareholders vulnerable to the expropriation of their interests by controlling shareholders and management of the firm. To address this issue, certain loopholes in the Corporation Code must be addressed. For instance, the Code allows a company to waive the preemptive rights in the article of incorporation upon registration or in a subsequent amendment. Likewise, the Code does not require potential conflict-of-interest transactions to be disclosed to shareholders (ADB, 2003).

Intellectual property refers to any creation or product of the human mind or intellect. It can be an invention, an original design, a practical application of a good idea, a mark of ownership such as trademark, and literary or artistic work, among others. In order to protect intellectual property rights, the Philippines enacted RA 8293, also known as the Intellectual Property Code of the Philippines, which took effect on January 1, 1998. The intellectual property code consists of the following:

- *Copyright and related rights.* The copyright law protects original expressions in the forms of literary, scholarly, scientific and artistic creations. Copyright protection may also be extended to software programs, compilation of databases, and derivative works. These may include dramatizations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works. A copyright is protected during the life of the author and for 50 years after his or her death.

- *Trademarks and service marks.* A trademark or service mark is a distinctive and visible sign, symbol, emblem, or device used by the enterprise to differentiate its goods or products (trademark) or services (service mark) and shall include a stamped or marked container of goods. The use of the mark generates goodwill that gives value to the intellectual property. A trademark is protected for 10 years and may be renewed for periods of 10 years each.
- *Geographical indications.* A geographical indication is something that identifies goods as originating in the territory of a country, or a region or locality in the territory, where a given quality, reputation or other characteristics of the goods are essentially attributed to its geographical origin.
- *Industrial designs.* The industrial design law protects the new ornamental appearance of an article of manufacture. An industrial design is protected for five years from the filing date of the application and may be renewed for not more than two consecutive periods of five years each.
- *Patents.* A patent is a grant issued by the government, which gives the inventor the exclusive right to exclude others from making, using, importing, or offering for sale the product of his or her invention. An invention is any technical solution of a problem in any field of human activity, which is new, involves an inventive step, and is industrially applicable. A patent is protected for 20 years from the filing date of the application.
- *Layout designs of integrated circuits.* The layout design of integrated circuits is an original topography (picture of a surface) of elements, at least one of which is an active element, and of some or all interconnections of an integrated circuit, or such three-dimensional disposition prepared for an integrated circuit intended for manufacture. A layout design is protected for 10 years from the filing date of the application.
- *Protection of undisclosed information.* The protection sought by natural and legal persons who have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information is *secret* in the sense that it is not, as a body or in precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; has *commercial value* because it is secret; and has been subject to *reasonable steps* under the circumstances, by the person lawfully in control of the information, *to keep it secret*.

In addition to the foregoing, the intellectual property system of the Philippines also includes the protection of utility models and new plant varieties.

- A *utility model* is a petty patent for new and industrially applicable technical solution of a problem. A new and useful, but obvious improvement may be protected as utility model. A utility model is protected for seven years from the filing date of the application without renewal.
- The New Plant Varieties Protection as covered under RA 9168, which took effect on July 20, 2002, governs the protection of *new plant varieties*. In order to be entitled to protection, the new plant variety must be distinct, uniform, and stable. A new plant variety is protected for 25 years or for 20 years from the date the protection is granted, for trees and vines and for all other types of plants, respectively.⁴⁹

⁴⁹ Intellectual Property Office brochure (Philippines)

The Intellectual Property Office administers the protection of property rights other than copyright, while the National Library administers the protection of copyright and related rights. However, enforcement of the law provides more room for improvement.

Country Readiness for Globalization

The foregoing review of existing Philippine law and regulations, which have an impact on the capability of the Philippines to cope with the challenges of globalization and to benefit from it, clearly demonstrated that the Philippines has sought to make its industries globally competitive through certain public policy initiatives:

- Reduction of infrastructure costs of telecommunications, transportation, and banking, by breaking up the monopolies and cartels to reduce the cost of doing business in the Philippines as well as provide cheap and easy access to global markets
- Provision of energy requirements by harnessing private sector resources through BOT schemes and deregulation of the oil industry
- Reduction of tariff barriers as to gradually expose Philippine industries to international competition and so force such industries to become globally competitive.

While such public policies met with enough success to remove the title “Sick Man of Asia” from the Philippines, certain developments have enabled the doubters of such policies to have a basis for calling for a review, or even a reversal, of such policies.

As with all changes, globalization poses new challenges to existing industry players as well as to the new entrants to the industry. It must be kept in mind that market-strengthening activities are as important as regulatory reform.

Over-Safeguarding, Bail-Outs, and the New Protectionists

Globalization policies give more freedom, which unfortunately carries with it the possibility and, more importantly, the necessity to have the ability to accept failure. That certain companies will fail is a real possibility that challenges public policymakers who would be under public pressure to bail out companies that fail the test of increased competition globalization would bring.

One development, which is a consequence of such policies, has been the demise or the debacle of Philippine companies exposed to global competition. The prime example is PAL and, to a lesser extent, shipping companies such as Negros Navigation. Failing the test of the market place, PAL has been forced to reduce its workforce and ended up being crippled by a pilots’ strike. Under the liberalization framework, PAL, Asia’s first airline, would have suffered the same fate as Pan Am, the world’s first airline. However, the government flinched from such a draconian stance and sought to revive the airline. Fortunately for the public, the government wisely refused to use public funds to bail out PAL.

PAL has sustained its efforts through the years to oppose the liberalization of the air transport industry. In fact, there is a clamor from other gateways in the country, i.e., Diosdado Macapagal International Airport, Mactan International Airport, and Davao International Airport, for the Philippines to declare open skies in order to generate more air traffic.

On the other end of the spectrum has been the PLDT. In spite of the liberalization of the industry and the entry of several big players, PLDT has successfully defended its

dominant position through a combination of reforms, such as the Zero Backlog Program, and its stranglehold on interconnection. Even with such stranglehold though, PLDT has not fared so well in the cellular phone submarket. Observers have raised the troubling issue that PLDT has now the best of both worlds: enjoying the use of its leverage as dominant player and yet not as tightly subject to regulation as before.

There exists another real possibility that the new entrants, having been admitted into the industry, will suddenly switch positions and advocate restrictions on later entrants. Today's free-marketers can become tomorrow's protectionists. Industry players can develop new strategies and evolve new strategic alliances that could, if not anticipated and countered, return the industry into a position of anti-competitiveness and uncompetitiveness.

Promotion versus Regulation

The initial assumption that globalization and liberalization will make the work of public policymakers easier is wrong. The role of public policymakers has shifted from regulatory functions to promotion functions. Instead of being active participants or interveners in the market place, public policymakers have to set the proper environment for competition and competitiveness and to assure a level playing field among all industry players, so that Philippine industries can survive in the global setting.

The basic premise of the liberalization policies and laws of the various government administrations since the term of President Fidel V. Ramos is that Philippine industries are not globally competitive, with a few exceptions in the industry sector. This is the major reason why the Philippines has lagged behind the Asian tiger economies. The trend towards globalization has become irreversible. Thus, unless Philippine industries can be made globally competitive, the economic future of the country will be bleak.

However, liberalization efforts should not focus on the few exceptional competitive industries but on those industries that have been making such competitive industries less competitive in the market place, *e.g.*, expensive local sugar is making local food processors uncompetitive. The philosophy behind Hong Kong and Singapore as Free Ports is that such policy enables their industries to source from anywhere in the world the best and the cheapest inputs possible for their industries. In sharp contrast, Philippine export-oriented industries have been used and are continuing to be used to subsidize the less competitive industries. Thus, while the industries of Hong Kong and Singapore start with an input advantage, Philippine export industries start with an input handicap.

Inputs here refer, not only to the raw materials but also to infrastructure services such as power and telecommunications where cross-subsidies exist. Such cross-subsidies usually consist of charging below market rates to consumers and offsetting the losses by charging above market rates to commercial users. This has been the easy policy way out rather than introducing competition among the infrastructure services providers so as to lower the charges to both consumers and commercial users.

The new role of public policymakers will also breed the selection of and development of new policymakers.

Building Implementation Capacity

The new role of public policymakers requires the building of implementation capacity. As is evident, reasonable laws and regulations to prepare the Philippines for and benefit from globalization are already in place. It is not enough to have international

standards in place. Poor implementation hobbles or prevents economic and social growth. To implement all these laws, even more the new laws specifically enacted to cope with globalization the personnel of regulatory, judicial and quasi-judicial agencies have to be trained on the complex aspects of these laws and their enforcement. This will be a long process, entailing, as it does, strong political will, private sector cooperation, and vigilance from public interest groups.

Support for anti-corruption initiatives would increase the capacity of the government to effectively enforce regulations.

VI. TRANSPARENCY AND ACCOUNTABILITY IN TRADE AND INVESTMENT ACTIVITIES

The chief aim of the country's agencies and institutions is to ensure and enhance the country's credibility in enforcing the rule of law that governs market transactions and the enforcement of contracts. Governments that fail to ensure law and order, protect property and property rights, and apply rules and policies predictably are not considered credible by investors, and growth and development in these countries suffer as a consequence (World Development Report 2002). There are a number of agencies and institutions that promote transparency and accountability in trade and investment activities in the country. Among these are the National Economic and Development Authority, the Department of Trade and Industry, the Board of Investments, the Philippine Economic Zone Authority, the Securities and Exchange Commission, the Bangko Sentral ng Pilipinas, the Department of Finance, the Bureau of Internal Revenue, the Bureau of Customs, and Bureau of Immigration, among others.

The National Economic and Development Authority⁵⁰ (NEDA) is the government's central planning institution, which consists of the NEDA Board and the NEDA Secretariat.⁵¹ The powers and functions of NEDA reside in the NEDA Board, the country's highest socioeconomic development planning and policy coordinating body. Five cabinet-level interagency committees – Development Budget Coordination Committee, Investment Coordination Committee, Infrastructure Committee, Social Development Committee, and Committee on Tariff and Related Matters – assist the NEDA Board in the performance of its functions. The NEDA Secretariat serves as the research and technical support arm of the NEDA Board. Specifically, it provides technical staff support and assistance that include the conduct of studies and the formulation of policy measures and other recommendations on the various aspects of development planning and policy formulation, and coordination, evaluation and monitoring of plan implementation. A Director-General who also carries the rank and title of Secretary of Socioeconomic Planning and Development heads the NEDA Secretariat. The NEDA Secretariat is composed of three offices – National Development Office, Regional Development Office, and Central Support Office.

The National Development Office (NDO) provides technical staff support to the NEDA Board in coordinating the formulation of national and sectoral policies, plans, and programs; monitors macroeconomic and sectoral performance and prepares the necessary economic reports; and conducts economic and development studies on macrolevel plans and policies. The NDO is composed of six bureau-level staff units.

⁵⁰ NEDA brochure

⁵¹ NEDA was created in 1972, exercising the functions then vested in the National Economic Council, the Presidential Economic Staff, and other ad hoc economic institutions. Executive Order (EO) 230, issued on 22 July 1987, reorganized NEDA into its present organization, function, and responsibilities.

The Regional Development Office (RDO) provides technical staff support as may be required by the implementing agencies at the regional level. The RDO is tasked to monitor regional and interregional development policies, plans and programs; prepare integrated reports on regional planning; and conduct studies on regional development policies. In order to perform its functions, the RDO is composed of two bureau-level staff units and fifteen regional offices. The NEDA Regional Offices (NROs) serve as the technical staff of the Regional Development Council (RDC) in the region, provide staff assistance to the RDC in the coordination of plan formulation and implementation at the regional level, provide staff assistance to implementing agencies in the region in identifying and developing programs and projects, evaluate and review proposed regional programs and projects for consideration by the RDC, monitor and assess project implementation at the regional level, and coordinate with regional offices of other departments and agencies and with local government units outside the National Capital Region in the performance of their assigned tasks.

The Central Support Office (CSO) provides the NEDA Secretariat with technical assistance and support services in the areas of development administration, internal management improvement, legal services, development information, and administrative services. Five bureau-level staff units comprise the CSO to help implement its duties and responsibilities.

The Department of Trade and Industry⁵² (DTI) is the government's primary coordinative, promotional, and facilitative arm with regard to trade, industry, and investment activities. The DTI acts as the catalyst for intensified private sector activity to accelerate and sustain economic growth through a comprehensive industrial growth strategy; a progressive and socially responsible liberalization and deregulation program; and policies designed for the expansion and diversification of both domestic and foreign trade.

In order to achieve its mandate, the Department sees its role as business and consumer champion guided by its five-point action strategy, namely, to promote and develop business, with focus on small and medium enterprises; to prepare the country for its becoming a knowledge economy; to lower the cost of doing business; to ensure that consumers get the best value for their money; to upgrade the quality of governance in the Department. The goal of the Department through the aforementioned five-point action plan is to grow and expand Philippine trade and industry as the means to generate jobs and raise incomes, so that Filipinos may enjoy continuing improvements in their quality of life.

The Board of Investments⁵³ (BOI) is an agency attached to DTI and is responsible for the promotion of investments in the Philippines. BOI is divided into four operating groups: Investments Promotion, Technical Service Group, Industry Development Group, and Project Assessment Group. As the lead agency in promoting investments, BOI assists Filipino and foreign investors to venture and succeed in desirable areas of economic activities such as in food processing, construction, metal products, telecommunications, power and infrastructure projects, among others.

In order to meet the diverse requirements of investors, BOI offers specialized services such as information assistance to local and foreign investors; timely investment advice and facilitation regarding investor's business transactions; assistance in the selection of ideal investment location; joint venture matching services for local and foreign entrepreneurs with international businesses; business linkages with public and private sectors; evaluation and

⁵² www.dti.gov.ph

⁵³ www.boi.gov.ph

supervision of investment applications; training on investment promotion; seminars on investment networking for local executives; investment briefings, inbound and outbound missions, seminars and conferences for local and foreign investors; entrepreneurial assistance to overseas Filipino workers; after-hours service through the Investment Promotion Network – a system of hotlines connecting Investment Promotion Units across twenty-four related government agencies; and industry sector planning and preparation of industry sector profiles.

The BOI must be transformed from an enterprise-specific incentives-granting agency into a promotional agency with industry-wide assistance (Virata and Associates 1996). Instead of focusing its resources on registration of projects and administration of incentives, the BOI can now direct its energies on the formulation of industrial policy: collect, exchange, and disseminate information on industrial productivity and world competitiveness. The authority to grant and administer incentives should be the responsibility of the Philippine Economic Zone Authority (PEZA), while BOI focuses on promotional activities (Patalinghug and Salazar 1993).

The Philippine Economic Zone Authority (PEZA) is a government corporation attached to DTI responsible for the promotion and establishment of world-class, environment friendly economic zones all over the country as a response to the demand for ready-to-occupy locations for foreign investments and businesses.⁵⁴ The PEZA Board, a thirteen-person group headed by the DTI Secretary, is responsible for the formulation and implementation of policies, plans and programs for PEZA, as well as the establishment and enforcement of rules and regulations that govern the establishment and conduct of economic zones in the Philippines. The mission of PEZA is to contribute to the accelerated creation of employment and other economic opportunities, especially in the countryside, and to spur the growth and diversification of exports by encouraging and supporting investments in the development and operation of economic zones.⁵⁵

The vision of the Securities and Exchange Commission⁵⁶ (SEC), as an independent and credible regulator adhering to international standards, is to be a prime mover of economic development in the country by ensuring a fair, efficient, and transparent capital market. The SEC shall actively promote the development of a globally competitive capital market, effectively regulate and monitor its operations, and widely disseminate reliable information for the protection of the investing public. In order for the SEC to carry out its mission, it shall harness its empowered human resources, functioning under the culture of efficiency and integrity, and deliver services through systems enhanced by appropriate technology.

The SEC is empowered by law to have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government; formulate policies and recommendations on issues concerning the securities market, as well as advise Congress and other agencies on all aspects of the securities market and propose legislation and amendments thereto; approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications; regulate, investigate, and supervise the activities of persons to ensure compliance; supervise, monitor, suspend or takeover the activities of exchanges and other

⁵⁴ PEZA was established through a legislative enactment known as “The Special Economic Zone Act of 1995.”

⁵⁵ www.peza.gov.ph/aboutus.htm

⁵⁶ www.sec.gov.ph

clearing agencies; impose sanctions for the violation of laws and the rules, regulations, and orders issued pursuant thereto; prepare, approve, amend or repeal rules, regulations and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulations and orders; and enlist the aid and support of and/or deputize any and all enforcement agencies of the Government, civil or military as well as any institution, corporation, firm, association or person in the implementation of its powers and functions under this Code.

Moreover, the Commission is empowered to issue cease and desist orders to prevent fraud or injury to the investing public; punish for contempt of the Commission, both direct and indirect, in accordance with the pertinent provisions of and penalties prescribed by the Rules of Court; compel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision; issue *subpoena duces tecum* and summon witnesses to appear in any proceedings of the Commission and in appropriate cases, order the examination of returns, books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, subject to the provision of existing laws; suspend or revoke, after proper notice or hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law; and exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

Under the New Central Bank Act, the Bangko Sentral ng Pilipinas⁵⁷ (BSP) was granted increased fiscal and administrative autonomy from other sectors of the Government, which means that it no longer undertakes quasi-fiscal activities that used to be done by the former Central Bank of the Philippines. Moreover, pursuant to the New Central Bank Act, the BSP is not permitted to engage in development banking or financing.

The main objective of the BSP is to formulate and implement policy in the areas of money, banking and credit, with the primary purpose of maintaining stable prices conducive to balanced and sustainable economic growth in the country. The BSP also seeks to promote and preserve monetary stability and the convertibility of the national currency [to other currencies]. Under the New Central Bank Act, the BSP performs the following functions, all of which relate to its being the country's central monetary authority.

- Conduct monetary policy. The BSP formulates and implements a monetary policy aimed at managing the expansion or contraction of monetary aggregates to effect price stability.
- Issue currency. The BSP has the exclusive power to issue the national currency.
- Lend to other banks and the Government. The BSP is authorized to extend discounts, loans and advances to banking institutions for the purpose of influencing the volume of credit consistent with BSP's objective of maintaining price stability. In general, the BSP does not regularly extend credit to the Government although it purchases government securities in the secondary market with regard to its open market operations. The BSP may finance government expenditures (annual appropriations) provided that the amount borrowed is repaid within three months and that the amount should not exceed twenty percent of the average annual revenues of the Government in the most recent three fiscal years.

⁵⁷ www.bsp.gov.ph

- Manage foreign currency reserves. The BSP aims to maintain sufficient international reserves to meet any foreseeable net demands for foreign currencies in order to preserve the international stability and convertibility of the national currency.
- Supervise and regulate financial institutions. In this capacity, the BSP conducts periodic or special examinations of banking institutions and quasi-banks, including their subsidiaries and affiliates engaged in allied activities.
- Determine exchange rate policy. Currently, the BSP adheres to a market-oriented foreign exchange rate policy such that BSP's role is principally to ensure orderly conditions in the [foreign exchange] market.
- Lastly, the BSP functions as the banker, financial advisor and official depository of the Philippine Government, its political subdivisions and instrumentalities, and government-owned-and-controlled corporations. The Bangko Sentral also provides the Government with opinions on the monetary implications of any foreign or domestic borrowing operations. Moreover, foreign borrowing of the Government require BSP's approval and the Bangko Sentral also represents the Government in international financial institutions, such as the International Monetary Fund and the World Bank.

The Department of Finance⁵⁸ (DOF) is the government's lead agency in providing a solid foundation for the country's drive to become one of the most dynamic economies in the world –globally competitive and forward looking – by building a strong fiscal position. Specifically, the DOF is responsible for the formulation, institutionalization and administration of fiscal policies in coordination with other concerned agencies and government institutions; generation and management of financial resources for the government; supervision of revenue operations in and of all local government units; review, approval and management of all domestic and foreign public sector debt; and rationalization, privatization, and public accountability of corporations and assets owned, controlled, or acquired by the government.

In order to perform its mandate, the DOF is empowered by law to formulate goals, action plans and strategies for the government's resource mobilization efforts; formulate, institutionalize and administer fiscal and tax policies; supervise, direct and control the collection of government resources; act as custodian of and manage all financial resources of the government; manage public debt; review and coordinate policies, plans and programs of GOCCs; monitor and support the implementation of policies and measures on local revenue administration; coordinate with other government agencies and institutions on matters concerning fiscal, monetary, trade, and other economic issues; and investigate and arrest illegal activities such as smuggling, dumping, illegal logging, and other unscrupulous economic activities that may affect or impact the economic interests of the country.

The Bureau of Internal Revenue has a mandate to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.⁵⁹ Given its mandate, the BIR intends to raise revenues for the government through effective and efficient collection of taxes, quality service to taxpayers, and impartial and uniform enforcement of tax laws. The Bureau envisions a tax-paying public satisfied with its services; an agency that is taxpayer-focused,

⁵⁸ www.dof.gov.ph

⁵⁹ Section 2 of the National Internal Revenue Code of 1997

efficient and transparent; an organization that is streamlined, productive, and responsive in its fiscal and administrative operations; a workforce that is professional, competent, morally upright and properly motivated; and an agency that models good governance in the public sector.⁶⁰

The Bureau of Customs⁶¹ is an important and the second largest contributor to government coffers. The Bureau aims to be more efficient and effective in customs collection, which adheres to the world's best practices on customs administration and be more responsive to the customs service needs of its clients. In order to achieve its mission, the BOC is empowered by law to assess and collect tax revenues from imported articles, fines and penalties, among other things, under the Tariff and Customs Code (TCC); prevent and suppress smuggling and fraud in customs administration; supervise and control the entrance and clearance of vessels and aircraft engaged in foreign trade; supervise and control the handling of foreign mail arriving in the Philippines for the purpose of collecting taxes on dutiable articles thus imported and prevent smuggling through mail; supervise and control all import and export cargoes, landed or stored in piers and terminal facilities, including container yards and freight stations; exercise exclusive jurisdiction over seizure and forfeiture cases under the tariff and customs laws; and enforce TCC and all other laws, rules and regulations relating to tariff and customs administration.

The four-fold thrust of the BOC revolves around revenue collection, trade facilitation, intelligence and enforcement, and internal administration of its resources. Under revenue collection, the BOC seeks to collect targeted revenues through improved collection efficiency and plugging of revenue leakages; under trade facilitation, it supports government programs through speedy clearing of goods and passengers from customs; under intelligence and enforcement, the Bureau protects society against prohibited drugs and other harmful substances, and illegal trade of natural resources; and under internal administration, it supports the government's thrust to streamline the bureaucracy and to employ resources more effectively and efficiently. In order to expedite customs processing, the Bureau has adopted the SPACE Program, which represents the five general principles underlying progressive clearance procedures and systems. Specifically, SPACE stands for –

- Selectivity: only high-risk shipments undergo the regular clearance process, while the majority undergoes express processing
- Post audit: shipments given express clearance may be subjected to post audit or some form of release clearance processing
- Advance processing: the clearance process is initiated well in advance of cargo arrival
- Client self-assessment: the Bureau will increase its reliance on client self-assessment and develop of atmosphere of honest and fair dealings
- Electronic data interchange: the process will be, to the fullest extent possible, automated and computerized

In accordance with the Revised Administrative Code of 1987, the Commission on Immigration and Deportation was renamed Bureau of Immigration⁶² as it is more properly called today. Under this Code the Bureau is composed of three structural units namely: the Office of the Commissioner, the Board of Commissioners, and the Board of Special Inquiry.

⁶⁰ www.bir.gov.ph

⁶¹ www.customs.gov.ph

⁶² www.gov.ph

These groups act as collegial bodies and exercises quasi-judicial powers affecting the entry and stay of foreign nationals in the country.

Laws Against Crime and Corruption

As mentioned under the legal and judicial system section of this paper, the Philippine Government is serious in reducing and eradicating corruption and other crimes that affect its credibility and capability as a participant in global economic development. Existing laws such as those embodied in the Philippine Constitution, the Civil Code of the Philippines, and the Revised Penal Code, as well as additions to these basic laws, should act as deterrent to crime and corruption. But due to the overlapping mandates and jurisdictions of enforcing agencies, as well as the multiplicity of laws, the responsibility and accountability to enact existing laws against crime and corruption is rendered arbitrary and susceptible to the capriciousness of those in authority. The consequence is that certain anti-competitive and corrupt practices are prosecuted in the criminal courts, which is long and tedious process that is impractical and useless to the business world where time is often of the essence, or not prosecuted at all. With regard to cross-border corruption, the Philippine Government has enacted the anti-money laundering law, which is in consonance with the international agreement on the prevention of money laundering and cross-border criminal activities.

Anti-Graft and Corruption Measures

Employees involved in trade and investment promotion, as well as all government employees, are accountable to the public for any unexplained wealth through the annual filing of the statement of assets and liabilities. Lifestyle checks of higher-level cabinet members, the military and police, and other public officials are also conducted regularly. In its most recent report on the Philippines, the World Bank cites lifestyle checks as one of the key measures in the government's anti-corruption campaign that "promote integrity by strengthening the threat of detection and retribution for misbehavior." Also referred to as asset consistency checks, these investigations focus on verifying data reported by government officials in their Statement of Assets and Liabilities (SALs). The SALs are submitted annually and declared under oath, as prescribed by RA 6713 or the Code of Conduct and Ethical Standards for public officials and employees. These disclosures cover assets, liabilities, net worth and other financial and business interests of public officials, their spouses and unmarried children below 18 years of age living in their households. A lifestyle check investigation conducted by the Office of the President and the Department of Finance resulted to the prosecution of several tax collection officials of the Bureau of Internal Revenue.⁶³

While the World Bank report noted that there is a general perception in the Philippines that institutional weaknesses persist in such key areas as the judicial system, enforcement of the rule of law, expenditure management, public financial accountability and management, and the civil service, it also acknowledged that "much has been done to improve governance" since the present administration assumed office on a platform of anti-corruption and good governance programs.⁶⁴

The establishment of a unit in government agencies responsible for setting ethical and competency standards for appointees to public office is one of the specific measures in the

⁶³ www.gov.ph

⁶⁴ www.gov.ph

action agenda on good governance of the current administration for the next six months. The measure, which was approved during the recent National Socioeconomic Summit, also calls for the conduct of a lifestyle check on prospective appointees to public office. The Civil Service Commission (CSC) has been tasked to come up with guidelines for the implementation of this measure not later than end of February 2002. This specific measure to raise the moral standards of government and society is one of the four core components of the national agenda of the Macapagal-Arroyo Administration.⁶⁵

VII. CONCLUSIONS AND RECOMMENDATIONS

The report describes the various laws, rules, regulations, agencies, and institutions that define the ability of the Philippine government to promote trade, investment, and growth. Administrative theory posits that states with effective public administration systems and strong institutions have the capacity to channel globalization to their own advantage and to minimize its costs.

The Philippine State is performing a lot of functions, some of which characterize the functions of a state with strong capability. A closer look at the outcomes of the assigned roles to Philippine agencies and institutions seems to reveal the inconsistency between the state's role and its capability.

The Philippine Government has been engaged in activities and functions related to redistribution and protecting the environment, a characteristic of countries with strong capability. However, in doing these activities, it weakens its ability to deliver basic and productivity-enhancing services such as upholding the rule of law, protecting property rights, providing infrastructure, and supporting education. Thus, a state with low state capacity compromises of delivering basic services when it simultaneously and prematurely adds several functions which are inconsistent with its given set of institutions, resources, and stage of development.

Although the Philippine Government has moved on beyond the basic services by venturing into regulation of markets, it has yet to provide programs that alleviate the conditions of the economically poor, a requirement for the basic functions of the state. The Philippine Government has also been implementing asset redistribution through the Comprehensive Agrarian Reform Program (CARP) and land grants to informal settlers in urban areas, an indication that the country is performing an activist function, a characteristic of countries with strong state capability. What's more, the government has created trade and export development councils that are analog to those implemented in East Asian economies in the 1990s, although the country has yet to provide the basic services required of countries with low state capacity and has yet to deliver the basic functions of the state – law and order, property rights. The main institution that oversees the coordination of developmental activities in the two branches of government is the Legislative Executive Development Advisory Council (LEDAC). Although on paper the LEDAC is a good avenue wherein the goals and objectives of the executive branch with regard to programs and projects for socioeconomic development are coordinated with the budgetary appropriation exercises conducted by the legislative branch, the process may become dysfunctional due to the divergent priorities of the two branches of government. The Philippines is one of the most politicized countries when it comes to appropriating budget for programs and projects. The Philippine Government annually conducts an interagency investment planning exercise

⁶⁵ www.gov.ph

called the Investment Priorities Plan (IPP). Although strategic in its importance in achieving a rational and coherent investment plan, the process of including programs and projects in the annual IPP is compromised when congresspersons and other special interest groups pressure the executive branch in including programs and projects that benefit only certain districts and constituencies to the detriment of the rest of the country. The government has been implementing reforms with regard to revenue collection to improve its effectiveness and efficiency in increasing its coffers to support its programs and projects. It is expected that it will continue to rely on foreign borrowing to finance most of its major capital projects for the foreseeable future. The only way for the government to stem its growing revenue shortfall is to improve its revenue collection capability and implement prudence in its expenditure programs. Thus, there is a need to reform the agencies and institutions that review, approve, plan, and program public investments such as the ICC, DBCC, LEDAC, and IPP.

The present Philippine legal and judicial systems could enable the Philippines to benefit from globalization. However, it must be remembered that the benefits of globalization may not be reaped where there is no firm political will. Over the past 18 years, the Philippine government has passed executive and legislative initiatives to spur and protect economic development and, it is to be hoped, to respond to globalization's challenges. At the very least, the Philippines needs to be perceived as a country where business may be conducted without the added costs and barriers created by corruption. These reforms were aimed at improving and strengthening the legal and regulatory infrastructure for doing business in the Philippines. More specifically, taxation, foreign exchange, and securities regulation were revised supposedly to bring these closer to global standards. In compliance with international commitments, various tariff rates for a number of industrial and agricultural products in the Philippines have either been reduced and/or modified through the issuance of Executive Orders. Changes under the Securities Regulation Code improve listing requirements and insider trading sanctions. The new law also offers better protection to minority shareholders through mandatory tender offers and deterrence of market abuses and fraud through the prohibition of insider trading, affiliated broker and dealer transactions and segregation of broker and dealer functions. However, enforcement of insider trading rules has proven difficult. It is recommended that certain loopholes of the Corporation Code be addressed to prevent companies from waiving preemptive rights in the articles of incorporation and to require companies to disclose potential conflict-of-interest transactions.

There are a number of agencies and institutions that promote transparency and accountability in trade and investment activities in the country. However, there is a general perception in the Philippines that institutional weaknesses persist in such key areas as the judicial system, enforcement of the rule of law, expenditure management, public financial accountability and management, and the civil service. The establishment of a unit in government agencies responsible for setting ethical and competency standards for appointees to public office is one of the specific measures in the action agenda on good governance. The conduct of lifestyle check is one of the government measures intended to raise the moral standards of civil service and society. Nevertheless, it is recommended that more transparency and accountability are required, particularly in the area of expenditure management as well as the area of public financial accountability and management.

It is likewise recommended that an in-depth follow-up study be made which gives an assessment of the three branches of government (executive, legislative, and judiciary) in terms of (1) administrative and policy making capacity, (2) transparency and accountability,

and (3) legal framework and capacity. The assessment must cover the following issues: capacity to promote healthy competition; regulatory framework and capacity; capacity to develop industries, sectors, and regions; policies for social development, redistributive justice, and poverty reduction; policies to promote performance, productivity, and competitiveness; and policies to protect the environment.

APPENDIX

Investment Coordination Committee

The Investment Coordination Committee is one of the five cabinet-level interagency committees that assist the NEDA Board in the performance of its functions.⁶⁶ The ICC is a multiagency working group that reviews the fiscal, monetary, and balance of payments implications of major capital projects⁶⁷ then recommend to the President of the Republic of the Philippines the timetable of the implementation of these projects on a regular basis; submit to the President a status of the fiscal (budgetary), monetary (credit), and BOP implications of the MCPs; and review and evaluate specific MCPs with respect to their technical, financial, economic, social, institutional development feasibility or viability, as well as from the context of sectoral plans and geographical strategies, then recommend to the NEDA Board for approval.⁶⁸

In general, ICC review is undertaken for MCPs requiring ICC clearance and/or NEDA Board approval as preconditions for loans and guarantees by the national government; private sector access to concessional ODA financing; obtaining BSP authority to negotiate foreign loans and Monetary Board approval of foreign borrowing; and budgetary appropriations [for national line agencies, other government agencies, and government owned and controlled corporations].

The ICC review process covers any independent undertaking of the public sector with total project cost of at least PHP300 million resulting in new capital formation⁶⁹ in the economy without regard of the source of financing (i.e., whether for local financing or through foreign loans and/or grants); public sector projects with foreign borrowing of at least US\$5 million; private sector projects seeking concessional ODA financing under on-lending arrangements and/or national government financing guarantees, which may include infrastructure projects to be undertaken under the build-operate-and-transfer and related schemes; and other projects and/or programs that do not fall under the abovementioned definitions shall be considered on a case to case basis.

The ICC review process consists of three levels – the technical board, the cabinet committee, and the NEDA Board. The ICC is supported by the ICC Secretariat, which provides technical support to the ICC TB and CC. The duties and responsibilities of the Secretariat includes but not limited to the evaluation of all projects submitted to the ICC and come up with comments and recommendations for consideration by the ICC; recommendation of the relative priority of projects with respect to sectoral or regional plans; assessment and improvement of existing methods and guidelines for project evaluation to proponent agencies, among others.

The ICC TB deliberates on the economic, social, financial, technical, and institutional aspects and implications of MCPs, including policy issues raised by the ICC Secretariat; identifies priority areas for foreign financing to guide the BSP in the evaluation and approval

⁶⁶ The other four cabinet-level committees are the Development Budget Coordination Committee, Infrastructure Committee, Social Development Committee, and Committee on Tariff and Related Matters.

⁶⁷ Projects that cost at least PHP 300 million

⁶⁸ ICC Guidelines and Procedures Revised on 11 April 1991 per ICC Cabinet Committee. The ICC Guidelines and Procedures were originally formulated as part of EO 230 reorganizing the National Economic and Development Authority on July 22, 1987.

⁶⁹ New capital formation refers to real investments involving physical additions to the capital stock of the economy.

of foreign loan proposals; refer to the ICC Cabinet Committee for deliberation and review the recommended actions, policies, and issues concerning specific projects; review the fiscal, monetary, and BOP implications of MCPs, and formulate policies appropriate to the review of projects, in general, and other matters relevant to the performance of the functions of the ICC.⁷⁰

The ICC CC recommends for approval to the NEDA Board the decisions on specific projects and/or programs submitted for ICC clearance, as well as other issues concerning ICC; recommends to the NEDA Board an annual implementation program for MCPs through the Medium-Term Philippine Investment Program (MTPIP); and submits to the President through the NEDA Board a status of the fiscal, monetary, and BOP implications of MCPs.⁷¹

The NEDA Board is the country's highest social and economic development planning and policy coordinating body. The Board ultimately decides the approval of MCPs for implementation and budgetary allocation and support.

Legislative Executive Development Advisory Council

The mandate of the Legislative Executive Development Advisory Council⁷² is to act as an effective advisory and consultative mechanism to ensure consistency in coordinating executive development planning and congressional budgeting and to provide the mechanism for generating consensus among the legislative and executive branches on various socioeconomic goals and objectives; and to serve as a consultative and advisory body to the President on certain programs and policies essential to the realization of the goals of national development.

The main functions of the Advisory Council are to facilitate the passage of priority legislation [that support socioeconomic development] and to provide a forum for continuing consultations and consensus building on vital socioeconomic concerns.⁷³ Under the Advisory Council proper is a LEDAC Executive Committee,⁷⁴ which approves and recommends to the Advisory Council the agenda for the LEDAC meetings; sets the overall thrust and direction of the LEDAC Secretariat; identifies priority areas requiring attention by the Advisory Council; and formulates options or alternative modes for resolving these issues for consideration by the Advisory Council. Under the LEDAC Executive Committee is the

⁷⁰ The ICC TB is chaired by NEDA and co-chaired by the International Finance Group of the DOF. The other members of the ICC TB includes DOF's Corporate Affairs Group, Office of the President, Department of Budget and Management, DTI, Department of Agriculture, BSP, Department of Environment and Natural Resources, Department of Energy, and Coordinating Council for Private Sector Participation. Other agencies may be invited to the ICC TB deliberations when deemed necessary.

⁷¹ The ICC CC is chaired by the Finance Secretary and co-chaired by the Director-General of NEDA. Its members include the Executive Secretary, the Budget and Management Secretary, the Trade and Industry Secretary, the Agriculture Secretary, the Energy Secretary, the BSP Governor, and the CCPSP Secretary. Representatives from other agencies, private and non-government institutions may be invited to the Committee's deliberations when deemed necessary.

⁷² The legal basis of LEDAC was created on 9 December 1992 through RA 7640.

⁷³ The Advisory Council is chaired by the President and composed of twenty members: the Vice President, Senate President, Speaker of the House, seven Cabinet secretaries, three senators, three congresspersons, a representative each from the local government, the youth and private sectors. A number of senators and congresspersons may be invited occasionally to ensure a more thorough discussion and consideration of vital socioeconomic and development issues.

⁷⁴ The NEDA Director-General chairs the LEDAC Executive Committee with representatives from the Office of the President, House of Representatives, and Senate as members.

LEDAC Secretariat, which oversees and coordinates the provision of the overall technical and administrative support to the advisory Council.

Development Budget Coordination Committee

The Development Budget Coordination Committee is one of the five cabinet-level interagency committees that assist the NEDA Board in the performance of its functions. The DBCC has three functions, which include the recommendation for Presidential approval of the level of the annual government expenditure program and the ceiling of government spending for economic and social development, national defense, general government, and debt service; the recommendation to the President of the proper allocation of expenditures for all development activities for the various infrastructure or capital projects; and the recommendation to the President of the amount set for allocation on capital outlay under each development activity for the various infrastructure or capital projects.⁷⁵

Civil Service Commission

The Civil Service Commission is the Philippine government's central personnel agency with a mandate to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. The Commission has an adjudicative responsibility and is tasked to render final arbitration on disputes and personnel actions on matters relating to civil service. The CSC is responsible for the recruitment, development, protection, and retention of a competent, professional, and highly motivated government workforce that is responsive to the needs of the various publics that interact with the government. The Commission's specific functions include leading and initiating the professionalization of the civil service; promoting public accountability in government service; adopting performance-based tenure in government; and implementing the integrated rewards and incentives program for government employees.⁷⁶

Republic Act 9184

Formerly referred to as the Government Procurement Reform Bill, RA 9184 directs all government transactions that pertain to procurement of materials and services to be centralized through a major computer network infrastructure called the Government Electronic Procurement System. The implementing rules and regulations of RA 9184 would create a Government Procurement Policy Board whose membership would be composed of government, nongovernment and private sectors.

The objectives of RA 9184 support the overarching objective of the current administration to minimize graft and corruption and increase transparency in all government activities. RA 9184 is intended to help prevent graft and corruption, improve operational efficiency, foster transparency, and encourage competition in the bidding process. RA 9184 or the Government Procurement Act is a step to streamlining the government's procurement transactions, which according to a private sector-led watchdog is plagued by illegal deals.⁷⁷

⁷⁵ NEDA brochure

⁷⁶ www.csc.gov.ph

⁷⁷ www.mctimes.net

Export Development Council

The Export Development Council⁷⁸ oversees the implementation of the Philippine Export Development Plan and coordinates the formulation and implementation of policy reforms to support the PEDP. The EDC is empowered to approve the PEDP; coordinate, monitor and assess the implementation of the PEDP, and, when necessary, institute appropriate adjustments in order adapt to changing conditions in both the domestic and international environment; periodically review and assess the country's export performance, problems, and prospects; identify the main bottlenecks, problem areas and constraints in all areas that influence export development, such as policy framework, physical infrastructure, finance, technology, promotions and marketing; among other things.

The Export Development Act of 1994 is implemented within the institutional structures and strategies of the Export Development Council. The goal of the Export Development Act is to provide a macroeconomic policy framework that supports export development, especially in the following key areas of concern:

- Monetary and foreign exchange policies that establish and maintain a competitive exchange rate, supported by measures to provide safety nets for various sectors that may be adversely affected by the implementation of such policies, and that such policies shall be consistent with the objectives and functions of the BSP.
- Fiscal and credit policies that provide adequate funds for public and private investments and business expansion for export purposes, while keeping the cost of credit comparable to international levels and ensuring access to loanable funds for SMEs as well as highly technical export enterprises.
- Agricultural policies that build up viability and competitiveness of the country's agricultural sector and facilitate their linkage with industry to strengthen the agri-industrial base of the country's export thrust.
- Trade, tariff, and customs policies that engender competitiveness of domestic industries and facilitate their participation in international trade.
- Technical support policies that improve the quality of export products shall be adopted, particularly those related to technology transfers, research and development, technical training, and related activities.
- Policies that affect infrastructure in order to ensure the adequate supply and quality of power, water, transportation, communications, among other things in the context of the national export drive.
- Policies that strengthen the link between export growth and countryside development through policies favorable to SMEs, regional industrial centers, export processing zones, etc.
- Policies that promote labor and industrial relations, which recognize the inevitable industrial shifts that may occur in the effort to achieve international competitiveness.
- Policies and measures that minimize bureaucratic red tape and simplify procedures to support the country's export development thrust.
- Repeal the provisions of existing laws deemed detrimental to the export sector.

⁷⁸ EDC brochure

The Investments Priorities Plan

The Investment Priorities Plan⁷⁹ identifies specific priority economic areas and strategic activities that are able to sustain economic development. The theme of the 2002 IPP is “Sustaining Economic Development through Globally Competitive Industries.” The IPP embodies broad objectives of the current administration for national strategic consensus on a competitive economy that is capable of building wealth for the country in a more interactive global setting and a robust agricultural sector that matches the global benchmarks of efficiency. Regional development is addressed through industry clustering as one primary concern for a balanced economic program for global competitiveness. The 2002 IPP involves the regions in identifying priority industrial and agricultural activities and linkages for a dispersed growth to all regions of the country.⁸⁰

2003 IPP

Under the Mandatory Inclusions of the National List, the 2003 IPP differs only from the 2002 IPP in that it includes RA 9003 or the Ecological Solid Waste Management Act. Moreover, under the Support to Government Programs of the National List, the item on environmental projects is not included in the 2003 IPP, while a new item, printing facilities, is added. There is no additional item for the Regional List, which consists of the Industry Clusters and the ARMM List. However, Item 6 of the 2002 IPP Guidelines on the “testing and/or measuring services for emission and effluent and other related environmental parameters for machineries and equipment to exclude motor vehicle” is amended.

It appears that the noninclusion of environmental projects in the 2003 IPP is due to the addition of RA 9003 or the Ecological Solid Waste Management Act under the Mandatory Inclusions on the National List, although the item on environmental projects in the 2002 IPP involves activities that are unrelated to solid waste management (e.g., environmental pollution, which may also include air and water pollution; ecological facilities and river rehabilitation; among others). The exclusion of motor vehicles in the amended Item 6 of the 2002 IPP may be due to the existing laws on vehicle emission, which makes the inclusion of motor vehicles in Item 6 unnecessary.

The inclusion of RA 9003 is a step forward in the Government’s efforts to stem the worsening problem on solid waste management, especially in highly urbanized centers like Metro Manila. The effort is seen as a commitment of the present administration to formulate policies and come up with solutions to the solid waste management problem in the country. The end result would be a more sustainable and environmentally sound socioeconomic development policy for the Philippines.

⁷⁹ 2002 IPP provided by the Board of Investments of the DTI

⁸⁰ 2003 IPP is not yet approved as of April 4, 2003.

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