

JAPAN INTERNATIONAL COOPERATION AGENCY (JICA)

DEPARTMENT OF TRADE AND INDUSTRY

REPUBLIC OF THE PHILIPPINES

**The Capacity Building Program
on
the Implementation of the WTO Agreements
in
Republic of the Philippines**

FINAL REPORT

March 2004

UFJ Institute Ltd.

Preface

In response to a request from the Government of the Philippines, the Government of Japan decided to conduct “the Capacity Building Program for the Implementation of the WTO Agreements in the Philippines”, and the technical assistance was implemented by the Japan International Cooperation Agency (JICA).

JICA sent a Technical Assistance (TA) team, led by Mr. Hidekazu Tanaka of UFJ Institute Ltd., to the Philippines several times from December 2002 to March 2004.

The TA team held discussion with the officials from the Philippine government concerned, and conducted relevant needs assessment and knowledge transfer activities. After returning to Japan, the TA team compiled a report on the outputs of technical assistance and provided recommendations for further capacity building activities in this report.

I hope this report will contribute to the promotion of WTO-related capacity building activities in the Philippines and to the enhancement of goodwill between our two countries.

I would like to express my sincere appreciation to the officials from the Philippine government concerned for their close cooperation throughout the program.

March 2004

Tadashi Izawa
Vice President
Japan International Cooperation Agency

March 2004

Mr. Tadashi Izawa, Vice President
Japan International Cooperation Agency


Letter of Transmittal

We are pleased to submit the Final Report of the Capacity Building Program on the Implementation of the WTO Agreements in the Philippines. This report compiles contents and results of the technical assistance activities conducted through this Program, together with the recommendations for further capacity building implementing the WTO Agreements.

The goal of this Program is to assist developing countries to be able to receive merits from multilateral trade regime, through strengthening their administrative capacity for implementation of WTO Agreements. The Program covers four countries, Thailand, Indonesia, Malaysia and the Philippines. The Program for the Philippines started in December 2002, based of the Scope of Work signed on May 24th, 2002, and concluded with the Wrap-up Seminar and the delivery of Information Sharing System in February 2004.

We believe this Program has contributed to human resource and institutional development of the Philippine government through technical transfer activities by holding seminars and workshops. Furthermore, it covered transfer of Japanese experience in WTO, by inviting Japanese officials and experts as guest lecturers. It is expected that the Philippine government will make further effort in the capacity building in order to contribute in developing multilateral free trade system.

We would like to take this opportunity to express our gratitude to the Japanese officials concerned of JICA, Ministry of Economy, Trade and Industry (METI), Ministry of Agriculture, Forestry and Fishery (MAFF), and other relevant government organizations. We also wish to express our sincere gratitude to the officials concerned of the Philippine counterparts, namely Department of Trade and Industry (DTI), National Economic Development Authority (NEDA), Department of Agriculture (DA), Tariff Commission (TC). and other relevant organizations.



Hidekazu Tanaka

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Abbreviation

1. WTO relate issues

WTO	World Trade Organization
AD	Anti-dumping
CVD	Countervailing Duties
DSU	Dispute Settlement Understanding
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GRP	Good Regulatory Practices
MFN	Most-favored Nation
SCM	Subsidies and Countervailing Measures
SG	Safeguard Measures
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
AFTA	ASEAN Free Trade Area
AFAS	ASEAN Framework Agreement in Services
ASEAN	Association of South East Asian Nations
APEC	Asia-Pacific Economic Cooperation
ASEM	Asia-Europe Meeting
IEC	International Electrotechnical Commission
ISO	International Standardization Organization
WIPO	World Intellectual Property Organization

2. Government of the Philippines related issues

BIS-DTI	Bureau of Import Services (Department of Trade and Industry)
BITR-DTI	Bureau of International Trade Relations (Department of Trade and Industry)
BPS-DTI	Bureau of Product Standards (Department of Trade and Industry)
MIS-DTI	Bureau of Management Information System (Department of Trade and Industry)
DA	Department of Agriculture
DOT	Department of Tourism
DOTC	Department of Transportation and Communications
DOE	Department of Energy
DENR	Department of Environment and Natural Resources
PRC	Professional Regulations Commission
DTI	Department of Trade and Industry
NEDA	National Economic Development Authority
TC	Tariff Commission

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. Introduction

. Introduction

1. Background, Objective and Scope of the Program

1.1 Background of the Program

1.1.1 WTO and Developing Countries

World Trade Organization (WTO) was established in 1995 as a successor to the General Agreements on Tariffs and Trade (GATT) which mainly dealt with lowering conventional tariff and non-tariff barriers of goods. The Uruguay Round Agreements, which were the last comprehensive negotiation rounds under GATT, put member countries under commitments on new and emerging issues of international trades. The newly agreed “General Agreements on Trade in Services (GATS)” is a set of agreements for service trade, and “Agreements on Trade-Related Aspects of Intellectual Property Rights (TRIPS)” tries to establish common rules for trading intellectual properties. The Agreement on Technical Barriers to Trade (TBT) starts to cover all member countries including developing countries, which are required to establish domestic legal framework in technical regulation and industrial standards.

These agreements require WTO members to harmonize their domestic regulations so that the trade practice in member countries can be governed by common rules. However, many developing member countries have started to face difficulties in implementing these agreements due to their complexity and widening stakeholders in domestic governments as well as private sectors. Furthermore, progress toward world-wide globalization has increased a variety of trade and investment activities among both developed and developing members, which results in more opportunity for but at the same time friction in international trade.

Trade liberalization for agriculture products is a tough subject, making it an issue which seems to require more time and effort to reach to consensus among WTO members. The expansion of trade in agriculture products call for a common application of SPS measures, while concern for food safety is getting higher attention due to the emergence of animal disease and plant pests. The recent increase in the number of exporters and the volume of various industrial products has let to fierce competition and an increased frequency of the occurrence of trade friction, as indicated by the number of cases of dispute settlement at WTO on AD and SG.

The number of WTO members increased from 76 in 1995, to 148 after the Cancun Ministerial Meeting in September 2003, and, further increase is expected to involve LDCs and countries under economic transition. Most members who have joined since 1995 are developing countries. However, many developing members share an opinion that they are not fully enjoying the benefit of the multilateral free trade regime, compared with developed members. The incident at Seattle Ministerial Meeting indicated a need to harmonize the interests of members at different economic levels. The Capacity Building Program is one effort to assist developing members to realize full participation in the multilateral trading system.

1.1.2 Capacity Building Activities under the WTO New Round

The Fourth WTO Ministerial Meeting at Doha, in November 2001, adopted the “Doha Development Agenda” and stressed the importance of due consideration for developing countries. In particular the WTO Ministers focused on the importance of the capacity building of developing countries and showed their understanding of the need for capital funds, bilateral cooperation, coordination with other international organizations, and technical assistance in information technology fields. Based on this agenda, the developed members have begun to plan the contents of the capacity building programs, which may expand their target countries. The Fifth Ministerial Conference, held in Cancun in September 2003, resulted in limited progress in launching new issues, the so-called “Singapore Agenda”. On the other hand, Cambodia and Nepal, both least developing countries, joined as new members, suggesting the importance of capacity building for these new LDC members.

1.1.3 Japan’s Initiative in APEC

The Japanese Government proposed, at the Meeting of APEC Ministers Responsible for Trade, in June 2000, to maintain and develop multilateral trade regimes through encouraging developing economies to build and strengthen their domestic legal and administrative infrastructure for implementation of the WTO Agreements. In November 2000, the APEC Ministerial Meeting and informal Leaders’ Meeting, approved “the APEC Strategic Plan,” which intended to build developing economies’ capacity for implementation of the WTO Agreements. This plan was then transferred to bilateral assistance programs, through Japan International Cooperation Agency (JICA) for the implementation of specific assistance in the Philippines, Indonesia, Thailand and Malaysia.

1.2 Objective of the Program

The objective of this program is to conduct capacity building activities on the implementation of commitments under WTO Agreements¹ in support of the government of the Philippines, which faces various challenges in developing its economy through trade and investment under multilateral trading systems. These activities include human resource development for the government officials, strengthening of administrative functions, and enhancing information sharing systems.

1.3 Scope of the Program

1.3.1 Target Countries and Agreements

This Program covers capacity building for the implementation of WTO Agreements in the Philippines as well as Thailand, Indonesia and Malaysia, which are considered as middle-level developed countries in terms of their market sizes and economic development stages. The target Agreements covered by this Program are those already signed and valid Agreements of WTO (Table I-1-1-1). It is noted that the new issues under “Singapore Agenda” such as trade and investment, trade and competition policy are not included in the scope of this Program.

Table I-1-1-1 WTO Agreements and Scope of the Program

1 A Multilateral Agreements on Trade in Goods <ul style="list-style-type: none">◆ Agreement on Agriculture◆ Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)◆ Agreement on Technical Barriers to Trade (TBT)◆ Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement) (AD)◆ Agreement on Subsidies and Countervailing Measures (SCM)◆ Agreement on Safeguards (SG)
1 B General Agreement on Trade in Services (GATS)
1 C Agreement on trade-Related Aspects of Intellectual Property Rights (TRIPS)
2 Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)

(numbers imply the annex numbers of WTO Agreements)

¹ “Implementation of commitments under WTO Agreements” will be described, hereinafter, as “implementation of WTO Agreements.”

1.3.2 Scope of the Program

The scope of the Program agreed on May 24, 2002, between the Government of the Philippines and the Preliminary Study Team of JICA is indicated in Box I-1-1-1. The Program consists of six components, with an activity oriented approach in technical assistance through the holding of seminars and workshops to bring direct impact for enhancing the capacity of government organizations.

Box I-1-1-1 Scope of the Program

1. Enhancement of Inter-agency Information Sharing
 - (a) Analysis of institutional capacity of DTI and the related authorities (current status of information-sharing, inter-agency coordination, etc.)
 - (b) Formulation of recommendations to strengthen inter-agency coordination capacities by utilizing information and communication technology
 - (c) Selection of the scope of the information sharing system in DTI planned in (2) above for pilot implementation
 - (d) Pilot implementation of the system designed in (3) above
2. Capacity building for the implementation of the Agreements on Agriculture/Sanitary and Phytosanitary Measures (SPS)
 - (a) Review of understanding and implementation of the Agreements
 - (b) Provision of advice and guidance for improving capacity to implement the Agreements
 - (c) Recommendations for further building capacity to implement the Agreements
3. Capacity building for the implementation of the General Agreement on Trade in Services (GATS)
 - (a) Review of understanding and implementation of the Agreement
 - (b) Provision of advice and guidance for improving capacity to implement the Agreement
 - (c) Recommendations for further building capacity to implement the Agreement
4. Capacity building for the implementation of the Agreements on Safeguards and Implementation of Article VI of the GATT 1994 (Anti-Dumping Code)
 - (a) Review of understanding and implementation of the Agreements
 - (b) Provision of advice and guidance for improving capacity to implement the Agreements
 - (c) Recommendations for further building capacity to implement the Agreements
5. Capacity building for facilitating the implementation of the Agreement on Technical Barriers to Trade (TBT)
 - (a) Review of understanding and implementation of the Agreement
 - (b) Provision of advice and guidance for improving capacity to implement the Agreement
 - (c) Recommendations for further building capacity to implement the Agreement
6. Formulation of Action Plan for Building Capacity to Participate in the Multilateral Trading System
 - (a) Introduction of the significance of capacity building activities
 - (b) Analysis and identification of the present obstacles for capacity building and results (output, lessons, etc.) of the program for 1-5 above
 - (c) Recommendations and formulation of an action plan for further building capacity for smooth participation in the multilateral trading system

2. Outline of the Program and Composition of the Report

2.1 Concept and Challenges of the Program

In designing a capacity building program, it is quite important to recognize the background or given conditions of the target country. Each country has its unique political and social framework, economic and industrial foundations and awareness of business society and the general public regarding international trade and globalization.

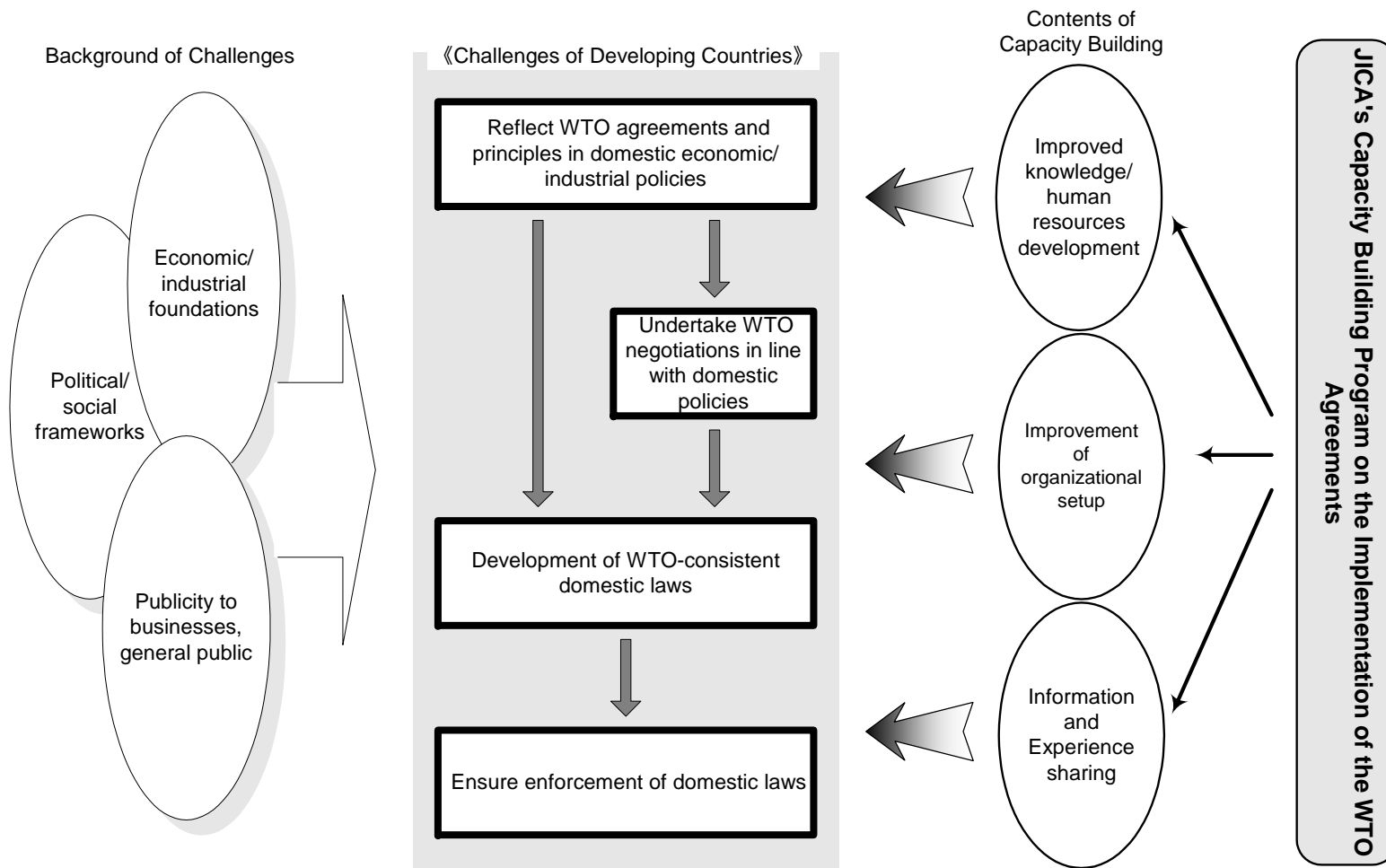
The challenge of the government office in charge of WTO Agreements is to ensure that committed WTO Agreements and principles are reflected in domestic policy and regulation mainly for economic, industrial and trade sectors. Since all agreements under the WTO are inter-government agreements, it is the responsibility of each government to fulfill obligations and maximize its national interest through international trade.

In order to assist the government effort in responding commitments under WTO Agreements, JICA Program intends to provide technical assistance through three kinds of functions listed below:

- Improved knowledge and human resources development through seminars, workshops, and document delivery.
- Improvement of organizational functions through inter-ministerial discussions and raising awareness regarding international competition.
- Information and experience sharing through the provision of information sharing systems, as well as through using the Japanese experience as a reference case.

The concept of this program, together with the challenges of developing countries is shown on the Figure I-2-1-1.

Figure I-2-1-1 Capacity Building on the Implementation of the WTO Agreements



2.2 Formation of the Program

The Program's technical assistance (TA) activity consists of following six cooperation contents ("Components"):

- (1) Enhancement of Inter-agency Information Sharing
- (2) Capacity building for the implementation of the Agreements on Agriculture/Sanitary and Phytosanitary Measures (SPS)
- (3) Capacity building for the implementation of the General Agreement on Trade in Services (GATS)
- (4) Capacity building for the implementation of the Agreements on Safeguards and Implementation of Article VI of the GATT 1994 (Anti-Dumping Code)
- (5) Capacity-building for facilitating the implementation of the Agreement on Technical Barriers to Trade (TBT)
- (6) Formulation of Action Plans for Building Capacity to Participate in the Multilateral Trading System

The first component is intended to build the Philippines' overall WTO Agreement implementation capacity. In terms of strengthening institutional aspects, a pilot database system is introduced into DTI as one practical means of helping to build capacity

Components (2) to (5) are addressed with the aim of concrete improvement of the Philippines' implementation capacity in regard to each specific agreement. An overview of the direction of assistance in each component can be characterized into the following features.

Agriculture/SPS (Component 2): Aspect on strengthening foundations

Capacity-building focused on strengthening the necessary foundations for implementation of the Agreements on Agriculture/SPS, including better general understanding of the outline of the Agreements and activities of the Committees in WTO.

GATS (Component 3): Strategic aspects

Capacity-building centering on the strategic aspects of GATS implementation, including deepening understanding of the GATS, identifying key sectors essential to

build GATS implementation capacity from among the Philippine's diverse domestic services industries, and analyzing the relationship between related domestic laws and the GATS.

SG/AD (Component 4): Technical aspects

Capacity-building closer to working level, focusing on technical aspects of SG/AD procedures such as clarification of injury assessment methods and demonstration of causalities.

TBT (Component 5): Aspects of strengthening foundations

Capacity-building focused on the aspect of strengthening foundations to improve understanding and implementation of the agreement as well as institutional development.

Component (6) formulates the action plan for further capacity building by the Philippines' own effort, to enhance the efficiency of the technology transfer activities in components (1) to (5).

With regard to the overall flow and details of the activities, see Figures I-2-2-1 and I-2-2-2.

Figure I-2-2-1 TA Stages and TA Activities

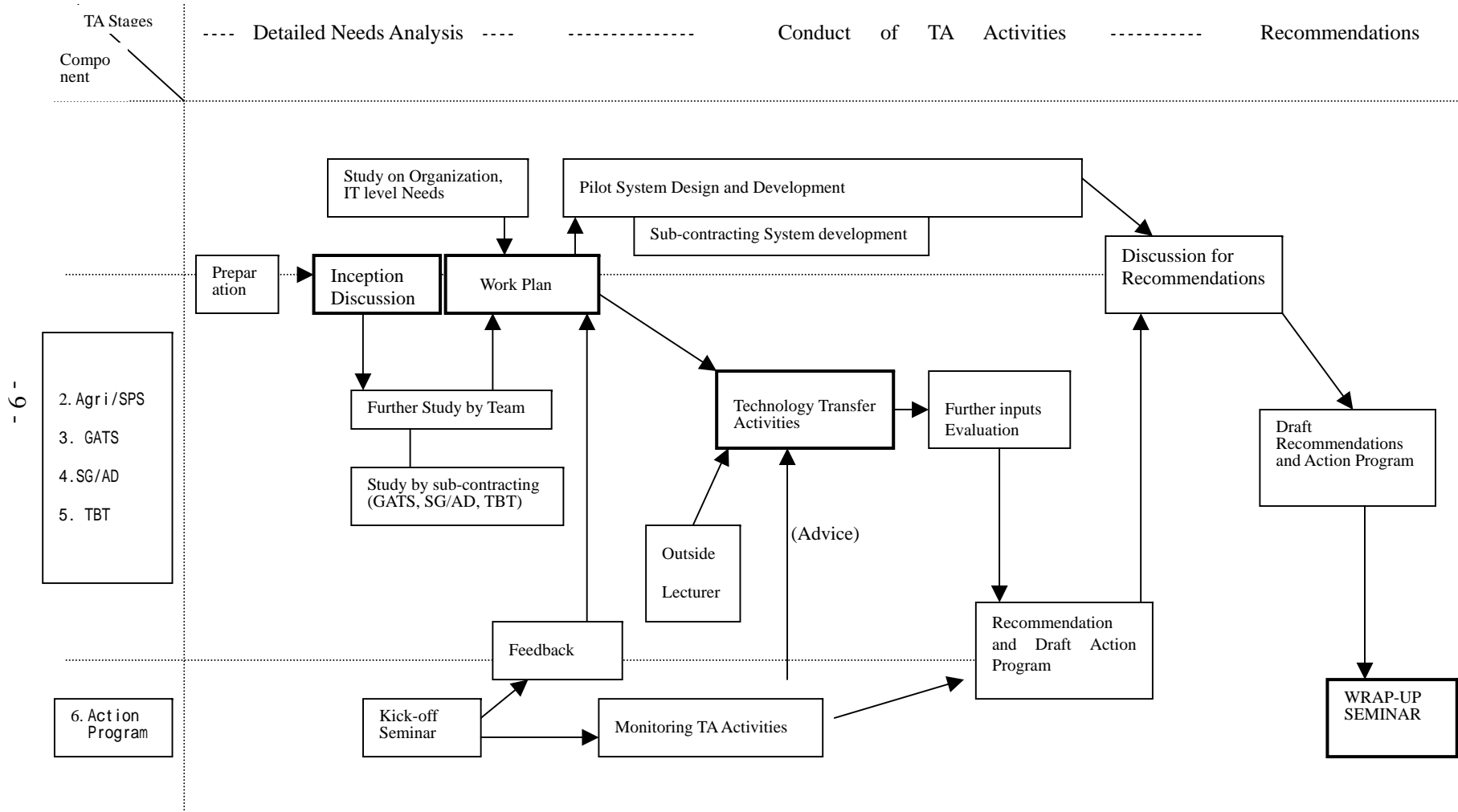


Figure I-2-2-2 Activities in the Philippines (yearly basis)

	Component 1 Enhancement of Inter-agency Information Sharing Counterpart: BITR-DTI	Component 2 Capacity Building for Agriculture/SPS Counterpart: DA	Component 3 Capacity Building for GATS Counterpart: NEDA, DOTC, DOT, DOE, DENR and PRC	Component 4 Capacity Building for SG/AD Counterpart: BIS-DTI, Tariff Commission	Component 5 Capacity Building for TBT Counterpart: BPS-DTI	Component 6 Capacity Building for Action Plan Counterpart: BITR-DTI
Summary of Activities	<ul style="list-style-type: none"> -WTO-RISS (Pilot System) Design and Development -Pilot System operation management manual development -Propose suggestions 	<ul style="list-style-type: none"> -Study/analysis on present situation of the implementation of Agriculture/SPS Agreements - Seminar on Agriculture/SPS Agreements and Risk Analysis -Development of recommendations 	<ul style="list-style-type: none"> -Study/analysis on present situation of the implementation of GATS -Studies on tourism and transportation services -Workshops on GATS -Development of recommendations 	<ul style="list-style-type: none"> -Study/analysis on present situation of the implementation of SG/AD Agreements Implementation -Workshop on SG/AD -Development of recommendations 	<ul style="list-style-type: none"> -Study/analysis on present situation of the implementation of TBT -Workshops for enhancement of understanding and knowledge of general and sector-specific issues in TBT Agreement -Development of textbook to understand the TBT Agreement -Development of recommendations 	<ul style="list-style-type: none"> -Development of essential element for Action Plan -Kick-off Seminar -Wrap-up Seminar
FY 2002 (Nov. 2002 – Mar. 2003)	<ul style="list-style-type: none"> -Understanding the current conditions of WTO-related information management within DTI -Understanding the current conditions related to the organization and work flow for WTO-related departments within DTI (December 2002) 	<ul style="list-style-type: none"> - Field Survey on present situation of the implementation of Agriculture/SPS Agreements and needs for capacity building (December 2002) 	<ul style="list-style-type: none"> -Field Survey on present situation of the implementation of GATS and needs for capacity building (December 2002) 	<ul style="list-style-type: none"> -Field Survey on present situation of the implementation of SG/AD Agreements Implementation and need for capacity building (December 2002) 	<ul style="list-style-type: none"> -Field Survey on present situation of implementation of TBT Agreement and needs for capacity building (December 2002) 	<ul style="list-style-type: none"> -Kick-off Seminar (March 2003)

<p>FY 2003 (Apr. 2003 – Mar. 2004)</p>	<ul style="list-style-type: none"> -Propose concept for Pilot System Concept (May 2003) -Propose Basic Design for Pilot System (August 2003) -Develop Alpha version for Pilot System (September 2003) -Propose digitization scheme and manual for WTO documents within DTI (October 2003) -Start digitization (November 2003) -Develop Beta version for Pilot System (December 2003) -Develop Final version for Pilot System (February 2004) -Propose Pilot System operational management manual (February 2004) -Propose future action 	<ul style="list-style-type: none"> - Field Survey on present situation of the implementation of Agriculture/SPS Agreements (June 2003) - Seminar on Agriculture/SPS Agreements and Risk Analysis (August 2003) -Development of recommendations 	<ul style="list-style-type: none"> -Field Survey on present situation of the implementation of GATS (May 2003) -Workshops on general understanding of the GATS, tourism and transportation services (June 2003) -Workshops on professional services, environment and energy (November 2003) -Seminar for familiarization with GATS, technical session on GATS negotiations (January 2004) - Studies on tourism and transportation -Development of recommendations 	<ul style="list-style-type: none"> -Field Survey on present situation of the implementation of SG/AD Agreements -Workshop on SG/AD (July 2003) -Development of recommendations 	<ul style="list-style-type: none"> -Field Survey on present situation of the implementation of TBT Agreement (May 2003) -Workshop on general understanding on TBT Agreement (August 2003) - Workshop on further understanding on TBT Agreement (December 2003) - Development of textbook to understand TBT Agreement -Development of recommendations 	<ul style="list-style-type: none"> -Wrap-up Seminar (February 2004) -Development of essential element for Action Plan
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2.3 Activities in the Philippines

Figure I-2-3-1 Activities in the Philippines

1 st Field Session	2002.12	• Inception Mission						
2 nd Field Session	2003.03	<ul style="list-style-type: none"> • Kick-off Seminar <table border="1"> <thead> <tr> <th>Component</th> <th>Period</th> <th>Participants</th> </tr> </thead> <tbody> <tr> <td>Kick-off Seminar</td> <td>1 day</td> <td>134</td> </tr> </tbody> </table>	Component	Period	Participants	Kick-off Seminar	1 day	134
Component	Period	Participants						
Kick-off Seminar	1 day	134						
3 rd Field Session	2003.05	• Over-all Meeting						
4 th Field Session	2003.06	<ul style="list-style-type: none"> • Workshop <table border="1"> <thead> <tr> <th>Component</th> <th>Period</th> <th>Participants</th> </tr> </thead> <tbody> <tr> <td>Component 3 (GATS)</td> <td>3 days</td> <td>118</td> </tr> </tbody> </table>	Component	Period	Participants	Component 3 (GATS)	3 days	118
Component	Period	Participants						
Component 3 (GATS)	3 days	118						
5 th Field Session	2003.07	<ul style="list-style-type: none"> • System • Workshop <table border="1"> <thead> <tr> <th>Component</th> <th>Period</th> <th>Participants</th> </tr> </thead> <tbody> <tr> <td>Component 4 (SG/AD)</td> <td>4 days</td> <td>45</td> </tr> </tbody> </table>	Component	Period	Participants	Component 4 (SG/AD)	4 days	45
Component	Period	Participants						
Component 4 (SG/AD)	4 days	45						
6 th Field Session	2003.08	<ul style="list-style-type: none"> • System • Seminar <table border="1"> <thead> <tr> <th>Component</th> <th>Period</th> <th>Participants</th> </tr> </thead> <tbody> <tr> <td>Component 2 (Agri/SPS)</td> <td>3</td> <td>96</td> </tr> </tbody> </table>	Component	Period	Participants	Component 2 (Agri/SPS)	3	96
Component	Period	Participants						
Component 2 (Agri/SPS)	3	96						
7 th Field Session	2003.08	<ul style="list-style-type: none"> • Workshop <table border="1"> <thead> <tr> <th>Component</th> <th>Period</th> <th>Participants</th> </tr> </thead> <tbody> <tr> <td>Component 5 (TBT)</td> <td>2 days</td> <td>33</td> </tr> </tbody> </table>	Component	Period	Participants	Component 5 (TBT)	2 days	33
Component	Period	Participants						
Component 5 (TBT)	2 days	33						
8 th Field Session	2003.09	• System						
9 th Field Session	2003.10	<ul style="list-style-type: none"> • Interim Mission • System 						
10 th Field Session	2003.11	<ul style="list-style-type: none"> • System • Workshop <table border="1"> <thead> <tr> <th>Component</th> <th>Period</th> <th>Participants</th> </tr> </thead> <tbody> <tr> <td>Component 3 (GATS)</td> <td>2 days</td> <td>100</td> </tr> </tbody> </table>	Component	Period	Participants	Component 3 (GATS)	2 days	100
Component	Period	Participants						
Component 3 (GATS)	2 days	100						
11 th Field Session	2003.12	<ul style="list-style-type: none"> • System • Workshop <table border="1"> <thead> <tr> <th>Component</th> <th>Period</th> <th>Participants</th> </tr> </thead> <tbody> <tr> <td>Component 5 (TBT)</td> <td>2 days</td> <td>37</td> </tr> </tbody> </table>	Component	Period	Participants	Component 5 (TBT)	2 days	37
Component	Period	Participants						
Component 5 (TBT)	2 days	37						
12 th Field Session	2004.01	<ul style="list-style-type: none"> • Seminar <table border="1"> <thead> <tr> <th>Component</th> <th>Period</th> <th>Participants</th> </tr> </thead> <tbody> <tr> <td>Component 3 (GATS)</td> <td>5 days</td> <td>210</td> </tr> </tbody> </table>	Component	Period	Participants	Component 3 (GATS)	5 days	210
Component	Period	Participants						
Component 3 (GATS)	5 days	210						
13 th Field Session	2004.02	<ul style="list-style-type: none"> • System • Over-all Meeting • Wrap-up Seminar <table border="1"> <thead> <tr> <th>Component</th> <th>Period</th> <th>Participants</th> </tr> </thead> <tbody> <tr> <td>Wrap-up Seminar</td> <td>1 day</td> <td>83</td> </tr> </tbody> </table>	Component	Period	Participants	Wrap-up Seminar	1 day	83
Component	Period	Participants						
Wrap-up Seminar	1 day	83						

TA activities in the Philippines ('field activities') are indicated in Figure 1-2-3-1. During 15-month period, there were 13 field sessions including Inception/Interim Mission, Kick-off/Wrap-up Seminar, workshop/seminar for each component, and systems development activities. It should be also noted that every seminar/workshop activity entailed extensive consultation with each counterpart organization. These consultation activities are considered as indispensable part of the Capacity Building Program.

2.4 Composition of the Report

The final report consists of two volumes, "Summary" and "Main Report", covering the entire activity of this Program.

The "Main Report" is divided into four parts, "I. Introduction," " . Present Situation and Challenges," " . Capacity Building Activities," " Recommendations," and a separated volume of "Appendix."

"I .Introduction" describes a general outline of the Program. " . Present Situation and Challenges" outlines the present situation in implementing WTO Agreements. " . Capacity Building Activities" covers activities in whole program and in each Component. " . Recommendations" offers an evaluation of the program and recommends further capacity building. "Appendix" contains selected documents/materials used during the activities in the Philippines.

. Philippines' Policy and WTO-related Organizations /
Present Situation and Challenges in Implementation of
WTO-Agreements

. Philippines' Policy and WTO-related Organizations / Present Situation and Challenges in Implementation of WTO Agreements

1. Trade Situation and Implication of WTO Agreements

1.1 Trade Situation of the Philippines

While the Philippine government followed domestic industry protection policy until the beginning of the 1980s as the other ASEAN countries, since 1986, it had followed the structural adjustment program initiated by IMF and the World Bank. In the 1990s, the increase in foreign direct investment drove economic growth and external trade, then lead to a drastic tariff reduction in 1995. The economic crisis in 1997 obliged the Philippine government to temporarily raise tariffs on certain commodities to maintain competitiveness of domestic industries, while at the same time regulations were loosened to re-attract foreign investors. According to the Philippine development plan for 1999-2004, liberalization of trade and investment based on the WTO agreement has been included as an economic development policy.

Comparing the Philippines' GDP and the share of trade with three other ASEAN countries, shows it is the highest among the 4 countries, with a share of manufactured goods in export accounting for 93%. This suggests substantial contribution of foreign direct investment to manufacturing for export (Table -1-1-1)

Table -1-1-1 GDP and Trade of ASEAN-4 (2001)

	Philippines	Thailand	Malaysia	Indonesia
GDP (US\$mill)	71,382	114,798	88,050	145,306
GDP/Cap (US\$)	925.48	1,824.80	3,890.84	676.35
Export (US\$mill)	32,140	65,112	88,199	64,874
Export share in GDP	0.45	0.57	1.00	0.45
Share of manufactured goods in export	92.7%	78.7%	82.0%	58.4%
Import (US\$mill)	29,558	62,057	73,857	38,797
Import share in GDP	0.41	0.54	0.84	0.27
Share of manufactured goods in import	73.3%	79.6%	87.3%	62.9%

Source : ASEAN JAPAN Centre

Looking at the composition of the Philippine trade, main exports are agricultural and fishery products (coconut, fruits and shrimp), mining products (copper),

manufactured goods (machinery, transport equipment, electric appliance and textile). Main imports consist of raw materials, fuel, machinery, parts and finished products, and consumer goods. It could be said that the Philippine has grown out of the trade structure depending on export of primary goods, however, it still has characteristics of dependency on foreign investment to process industry, which imports industrial materials and parts/components. On the other hand, export of agricultural and fishery products has not increased as much as imports in recent years. While the launch of multilateral trading system by WTO in 1995 had increased peoples' expectation on expansion of export of agricultural products, it has increased import of agricultural products rather than export, which implied negative perception for WTO, by some part of the Philippine economy.

Nevertheless, the Philippine economy needs to be developed through expansion of trade and investment within the multilateral framework of WTO, regional framework of AFTA, and bilateral FTAs which seems to be developed in the near future. The Philippines exports many 'overseas workers' who play important role to earn foreign exchange earnings which is regarded as service export. WTO would be able to provide the Philippines with an important framework for promoting this service export. In this context, implementation of WTO related agreements needs to be conducted acknowledging the right to enhance national interest, as well as the obligation to harmonize domestic rules and legislations with global ones.

Table -1-1-2 Composition of the Philippine Trade (2001)

	Items	Export (%)	Import (%)
	Food and live animals	4.0	6.7
	Beverage and tobacco	0.2	0.6
	Crude materials (excl. fuels)	1.1	2.7
	Mineral fuel, ect.	0.7	10.8
	Animal, vegetable oil & fats	1.3	0.1
Non-manufactured Goods Total		7.0	20.9
	Chemicals	1.0	8.0
	Basic manufactures	3.3	9.8
	Machines & transport equipments	38.5	36.7
	Miscellaneous manufactured goods	7.6	2.9
	Unclassified goods	42.4	15.8
Manufactured Goods Total		92.7	73.3

Source : ASEAN JAPAN Centre

1.2 Issues on Trade Policies

The second WTO Trade Policy Review of the Philippines was held in September 1999. It outlined issues of trade policies and measures, as highlighted in this section. Although the discussion occurred several years ago, the basic concern is considered to have not been largely changed.

The Review Members commended the Philippines on the economic reform undertaken since the previous Review in 1993, since the opening of trade and investment regimes has contributed to a more resilient economy, which addressed the Asian financial crisis. The Philippines achieved a decline in protection to producers, including reductions in the average MNF tariff from 26% in 1992 to 10% in 1999, with abolition of most quantitative import restrictions, as agreed in the Uruguay Round.

A number of trade policy issues were discussed between Review Members and the Philippine delegation, including the following points:

- rationalization of investment incentives;
- liberalization of existing foreign ownership restrictions, including the banking, telecommunications and retail sectors;
- the relationship between WTO and preferential agreements, particularly AFTA commitments;
- customs administration, customs valuation, and trade facilitation;
- protective measures on food products, automobile parts and vehicles and steel products;
- alignment to international standards, and SPS measures;
- further liberalization and WTO commitments in transport, telecommunications, financial services and natural persons supplying services.

The Review Members recognized that the Philippines had incurred social and political costs in liberalizing its trade regime, but the stronger multilateral system had been instrumental in facilitating the flow into the Philippines of foreign investment and goods required to increase domestic competitiveness. In this respect, the Philippine delegation expressed concern about certain trade-inhibiting measures maintained by some of its trading partners, including the high level of export subsidies and domestic

support measures in agriculture, as well as the application of rules of origin and SPS measures. The members encouraged the Philippines to continue on its liberalization path and domestic reform process.

2. Needs of Capacity Building for Each Component

2.1 Inter-Agency Information Sharing < Component 1 >

2.1.1 Background and Needs

The TA Team investigated the current situation of information management at DTI through a questionnaire survey, interviews and six separate field visits since December 2002. As a result of these investigations, the issues outlined below were identified regarding the treatment of WTO-related information management within DTI.

Within DTI, WTO-related information is accumulated and filed in the form of paper documents according to the document control rules by the appointed staff member within each the respective field. The filing methods are left to the discretion of the officials in charge. The method of information storage is subject to the practice of each section and officials in charge of filing. Other officials can access the information only by making requests. Consequently, the following issues have been recognized:

- It is difficult to find information when the official in charge is absent or temporarily unavailable.
- It is difficult to find information if the filing methods are inappropriate, since the filing method is left to the discretion of individuals.
- Some effort is usually needed to find out location of the information required.
- Lists should all be It usually takes sometime for the information to be obtained, because the information is stored manually and individually.
- It usually takes sometime for the information to be obtained, because the document storage location may be far from the officials' desk.
- In response to inquiries regarding WTO-related information from the domestic third parties such as private companies and researchers, DTI primarily provides answers by telephone or fax. Considering the developments in domestic industry and the improved visibility of trade policy within the country, providing private companies with information is important. Nevertheless, work efficiency is essential, since the cost in time of providing information limits time available for other work.
- In order to find solutions to the difficulty in providing WTO-related information, it is also necessary to determine an efficient method for storage of information. Since storage is directly related to the information sharing, both providing and storing

information require a simultaneous solution.

Considering the current situation, a consensus was made to improve the efficiency of managing WTO-related information within DTI by developing a pilot information-sharing system to enable easy access to the sharing and providing of information.

Also, there is a need for the pilot system to be maintained, managed and expanded by DTI. The TA team will likewise support the means for DTI to acquire know-how and methods for this purpose at the same time that the system is being developed.

2.1.2 Current Status of WTO-related Information Management

The conditions regarding the treatment of WTO-related information management within DTI is shown below, according to the following items.

- (1) Existing WTO related information Flow
- (2) Management and Storage of Existing WTO related information
- (3) Present Status of WTO related Information

(1) Existing WTO related information Flow

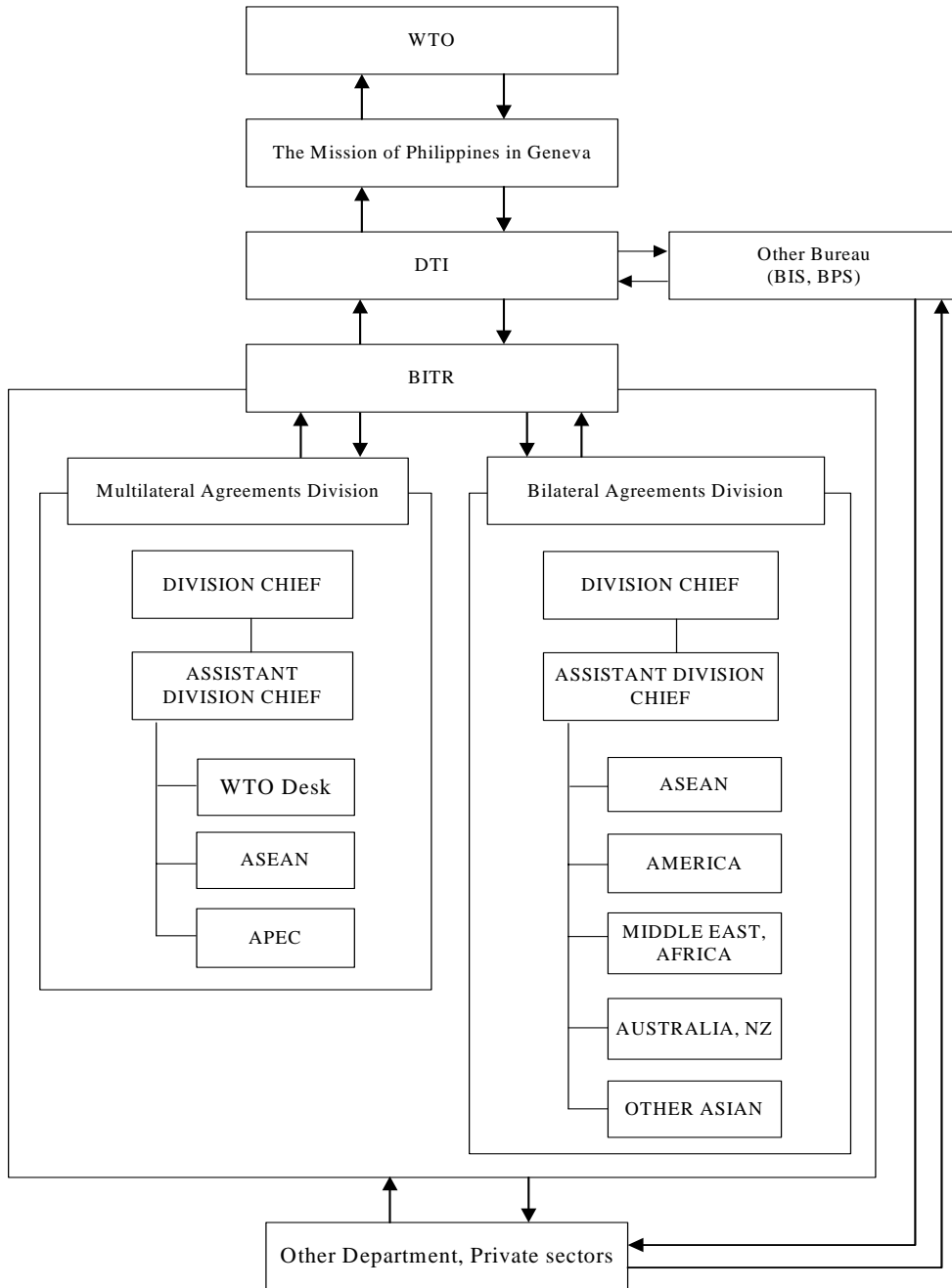
Within the DTI, the Bureau of International Trade Relations (BITR) is the office in charge of trade negotiations, and other related activities, as well as in coordinating with other Philippine government departments and agencies.

The main work of the BITR, aside from negotiations in various international meetings, involves analysis and report writing at the request of the Office of the Philippines Trade Representative in Geneva, as well as various other domestic government agencies.

In order to implement these analyses and reports, the BITR must receive WTO related information from the Office of the Philippines Trade Representative in Geneva, other bureaus within DTI, other government agencies, as well as private sector companies. In addition, after arranging and analyzing the received information, BITR

findings are once again fed back to the concerned organizations. The basic flow of WTO related information within DTI is shown in the Figure -2-1-1.

Figure -2-1-1 The Basic Flow of WTO related information within DTI



The information transmission mode used within DTI, not only for WTO-related information, basically involves paper documents. For communications outside the DTI organization, documents are prepared, checked, and approved prior to transmission. There are instances where the same tedious process of checks and approvals are required for communications between divisions within the same bureau. As shown in the diagram on the previous page, approvals are made in accordance with the organizational levels before any information can be transmitted. Because of this, in order to assimilate this system, there is a need to develop a document registration system which takes into account the existing information flow.

(2) Management and Storage of Existing WTO related information

Even within the DTI, the sharing of information is made basically through signed, official documents. Because of this, the arrangement and storage of information is basically done with paper documents. Each officer in charge stores paper documents related to his area of work, by maintaining paper files. However, as a result of such personal management and storage, several problems related to WTO related activities have been pointed out.

- All WTO related information is maintained and managed in paper files. These files are kept in either common shelves, or on individual desks. Because of this, while each person is responsible for the documents related to his individual work, they have little knowledge of what other documents are kept by other officers in charge.
- Documents for each category are kept in separate filing cases. Each officer in charge usually maintains separate filing cases filed by date, but there is no master list of file categories. Because of this, only the officer in charge knows where his files are kept, and when he is not in the office, it is possible that nobody knows where the documents are kept.
- In the BITR, in charge of WTO related activities, numerous requests for information come from the other bureaus within the DTI, other government agencies, private corporations, and the like. Since nobody knows who is keeping what documents, it often takes a long time to address said requests for information.
- At the same time, since said information is often sent by post or fax, it takes a lot of time and effort to do so.

- There are no set rules on who is allowed to view particular documents, making it impossible to maintain confidentiality of documents.

(3) Present Status of WTO related Information

As a result of the interviews conducted with the officers in charge within the DTI, the TA Team learned that the following types of information are necessary for WTO related information. As mentioned earlier, however, this information is not centrally managed, but each type is managed separately by the officer in charge. As a result, there are problems such as officers in charge keeping duplicate information, or not knowing where certain kinds of information are being kept.

(a) Types of Information

- Laws and regulations: Domestic laws and regulations relating to the WTO Agreements.
- Notifications: Documents submitted or to be submitted to the WTO (Secretariat) from the GOP based on the obligation of WTO Agreements.
- Measures: Domestic measures relating to the WTO Agreements such as limitation of import, technical regulations, etc.
- Tariff: Custom duties on goods as imported into Philippine market.
- Meeting minutes: Records of the meetings relating to WTO issues such as Committees on WTO, etc.
- Analysis reports: Reports and documents prepared for the internal meetings by officials and/or institutions.
- Others: including individual notes, documents indirectly to do with WTO such as APEC and FTAs.

(b) Information Sources (Authors)

- BITR Officer in Charge
- WTO Desk Officer within BITR
- Other Officers in DTI Bureaus
- Officers in other Philippine Government Departments and Offices
- Office of the Trade Representative of Philippines to Geneva
- Private companies/universities and others

(c) Types of Languages

- English

(d) Data Format

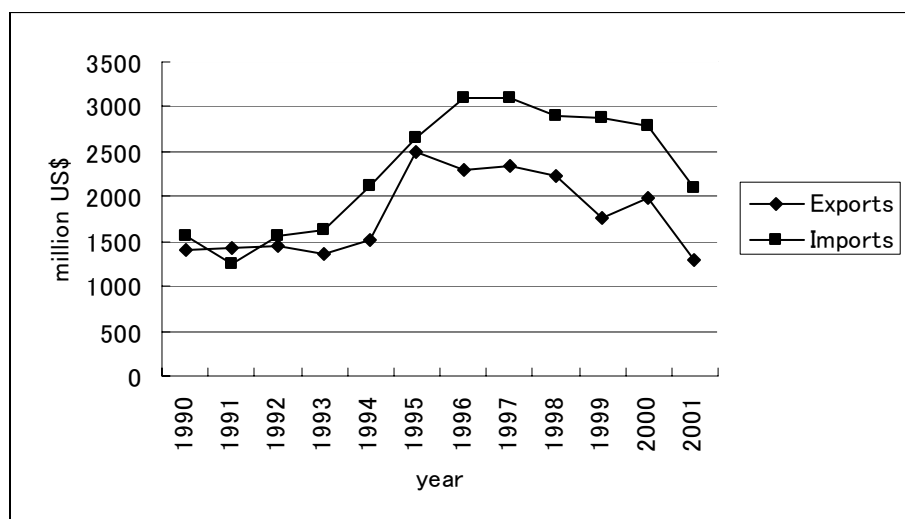
- Paper documents
- Electronic data

2.2 Agriculture and SPS Agreements <Composition 2>

2.2.1 Agriculture Sector in the Philippines Economy

The Philippine agriculture sector, which contributes 20 % to GDP and accounts for 40% of the labor force, plays a significant role for enhancing economic growth and employment as well as reducing poverty especially in rural areas. Generally, agricultural exports have lagged behind imports since the early 1990s as shown in Figure -2-2-1. Farmers and producers have shown concern about government decisions on the WTO, since WTO commitments have led to an import surge of cheap food products, which have eventually lowered the farm prices, and to dismantling of advantageous special trade arrangements, such as the US Sugar Quota and the GSP by 2004. The current attention to epidemics in the world, such as Bovine Spongiform Encephalopathy (BSE), Foot and Mouth Disease have also raised concern over the control capacity of food imports at the border.

Figure -2-2-1 Philippine Agricultural Trade (in million FOB US\$) 1990-2001



Source: Bureau of Agricultural Statistics

Some case studies have shown that sub sectors such as mango and asparagus have clearly benefited from the liberal trade regime as shown by an increase in their export volume. However, due to the sector's general inability to exploit expanding international markets and opportunities, food exports have not increased. Ensuring the safety of export commodities is one of the major problems to be tackled as the

Philippines faced some difficulties recently; Australia has restricted the import of banana and papaya from the Philippines due to pest risk analysis, sanitary testing²; and also Japan has suspended papaya import from the Philippines due to detection of the fruit fly.

Having experienced these difficulties, the Philippines recognize a strong need for capacity building on SPS service, especially in technical capacity on Risk Analysis. With regard to exporting products, some private sectors have become equipped with risk analysis techniques by inviting experts and investing in necessary facilities. Government institutes such as the Food Development Center also function to provide accreditation for international markets in order to enhance confidence in Philippine products. Among stakeholders both government and private, a weakness in risk assessment capacity is well recognized, yet the budget for training in risk analysis and upgrading the necessary equipment has not been increased. The SPS agreement requires member countries to use science-based agreements in determining appropriate level of protection (ALOP). Consequently, it requires an explanation as to how the specific risk assessment procedures and results were determined. In order to understand the mechanism of linking risk assessment and ALOP in a specific manner, there is a need to learn from the mechanisms of other countries.

Regarding those imported agricultural products, the role of the Bureau of Customs, which is mandated to collect duties and generate revenues, seems to surpass the respective agencies of DA and BFAD (Bureau of Food and Drug, Department of Health), which play a significant role in protecting domestic agricultural products against foreign products. These agencies have expressed concern regarding their capacity to protect people from the entry of pests and diseases from other countries and emphasize the importance of upgrading skills as well as laboratory facilities. Under these circumstances, the DA reiterates the need for capacity building for SPS measures in order to capture expanded export markets as well as to protect its own agricultural resources.

² The Government of the Philippines, on 18 October 2002, requested consultations with the Government of Australia regarding certain measures restricting the importation of fresh fruit and vegetables, including fresh banana fruit, fresh papaya fruit and fresh plantain from the Philippines. Thus request was circulated to Members on 23 October 2002 in document. The Philippines and Australia held consultations on 15 November 2002, but have failed to settle the dispute. On 7 July 2003, the Philippines therefore requested that the Dispute Settlement Body ("DSB") establish a panel to examine the matter.

2.2.2 Present efforts for implementing the Agreement on Agriculture

The ratification of membership in the WTO in 1994 brought a new challenge for the agriculture sector. The Uruguay Round Agreement on Agriculture (URAA) has had a significant effect on trade in agriculture, namely (a) market access, (b) domestic support, and (c) export subsidies. As the URAA calls for the Philippines to increasingly open its agricultural markets to foreign competition, the government has made effort as summarized in Table -2-2-1.

Table -2-2-1 A Summary of Philippine Agricultural Commitments in the WTO

Item in Agreement	Philippine Commitment	Remarks
Prohibition of the use of additional Non-Tariff Measures (NTM)	Yes	NTMs include discretionary import licensing, variable import levies, import quotas, and import bans.
Conversion of all existing import quantitative restrictions (QRs) to tariff protection measures	Yes, except for rice	Tarrification is done at twice the EO 470 rates and subject to a 100 % maximum rate. Tarrification of rice QR has been postponed for 10 years.
Tariff Bindings	Yes, at ceiling bindings	Ceiling biding is set above the present rate.
Tariff Reductions	Yes	Average cut is 30 %.
Reduction of WTO-inconsistent production subsidies	No	The Philippines maintains less than a 10 % subsidy rate.
Reduction of export subsidies	No	The Philippines does not maintain export subsidies.

Source: Department of Agriculture

With regard to Quantitative Restrictions, the Philippines invoked Annex 5 of the Agriculture Agreement to postpone the tariffication of rice as a politically sensitive food staple.

The Philippines is an original member of the Cairns Group which lobbies for equal market access opportunities for agricultural and industrial goods. The Cairns Group's interests cover the following: ensuring tariffs are the only form of protection, promoting tariff reduction/removal, advocating removal of all trade distorting domestic support, eliminating and prohibiting export subsidies, and ensuring special and

differential treatment between developed and developing nations. The group is considered a single-issue group, but a recent study on Philippine Agricultural Trade by the Cairns Group revealed the gap of trade imbalance has been widening between the Philippines and its Cairns trading partners. In addition, the Philippines has shown concern over subsidies given to agriculture products by the developed countries. However, concerns would not gain the support of the entire Cairns Group which includes developed countries. Local research groups have reported that cheap imported vegetables from the US, Australia, New Zealand, and China has flooded the Philippine market from 42,000 metric tons in 1995 to 115,000 metric tons in 2000. Furthermore, thousands more tons of vegetables have been smuggled into the country due to the weak control capacity at the border.

The Philippines recently started to put greater attention on achieving better terms and conditions for developing countries in the ongoing talks on Agreement on Agriculture (AoA). The Philippine delegation to the WTO Cancun meeting specifically argued three key reform pillars: domestic support, market access, and export competition. These reforms would benefit development countries' food security and livelihood enhancement and development.

Countervailing and anti-dumping duties are imposed on imported products which are dumped in an export market at costs lower than those collected in their country of origin. The Agricultural Competitiveness Enhancement Fund (ACEF) earmarked by Congress is another safeguard measure. This fund aims to finance WTO-related adjustment measures and competitive enhance projects.

The Policy Analysis Service of the Department of Agriculture (DA), the focal point for WTO negotiations and various internal policy making, currently has a technical staff of only three people including the Assistant Secretary, who heads the DA-Policy and Planning Office. To prepare strategy for negotiations and to craft negotiation papers, the government relies on external expertise and committees composed of private sector representatives, stakeholders of international trade as well as academics. The Task Force on WTO Agreement for Agriculture Renegotiation (TFWAAR) was organized by DA and representatives of private sector associations including the Philippine Chamber of Agriculture and Food, the Philippine Chamber of Commerce and Industry, the Federation of Philippine Industries and Philippine Sugar Millers Association and NGOs that support farmers, such as the Philippine Peasants

Institute. The TFWAAR is chaired by the DA Assistant Secretary for Policy and Planning and regularly holds meetings. It is supported by a core group consisting of technical staff of the DA and private sector organizations in undertaking trade-related research and formulation of proposals.

2.2.3 The Present efforts for the SPS Agreement

Most developing countries are facing problems in harmonizing both the complex procedures and mechanisms, and in legal and technical interpretation of WTO Agreements. The SPS Agreement allows countries to protect their plant, animal and human life from contaminated food products and diseases on carried plants and animals. It requires countries to harmonize with international standards and to be transparent in their domestic regulations. This particularly poses difficulties in the case of developing countries, which are in short of well-trained technical staff and facilities such as laboratories and cold storage.

The implementation of SPS measures in the Philippines involves various laws and agencies. The Philippines quarantine laws were drafted as far back as to the 1920's. The laws on plants, fisheries and animal have been subsequently amended in more recent years. Current efforts to revise these laws to streamline the service and harmonize the provision of the SPS agreements are under way. The Revised Administrative Code of 1987 delineated the formulation and imposition of SPS measures. DA, through its responsible bureaus and attached agencies, handles the implementation of specific food safety and the quarantine of agricultural products in live, fresh, or semi-processed forms. Regarding processed food, the Bureau of Food and Drugs (BFAD) of Department of Health (DOH) has the primary obligation to ensure the safety of human health.

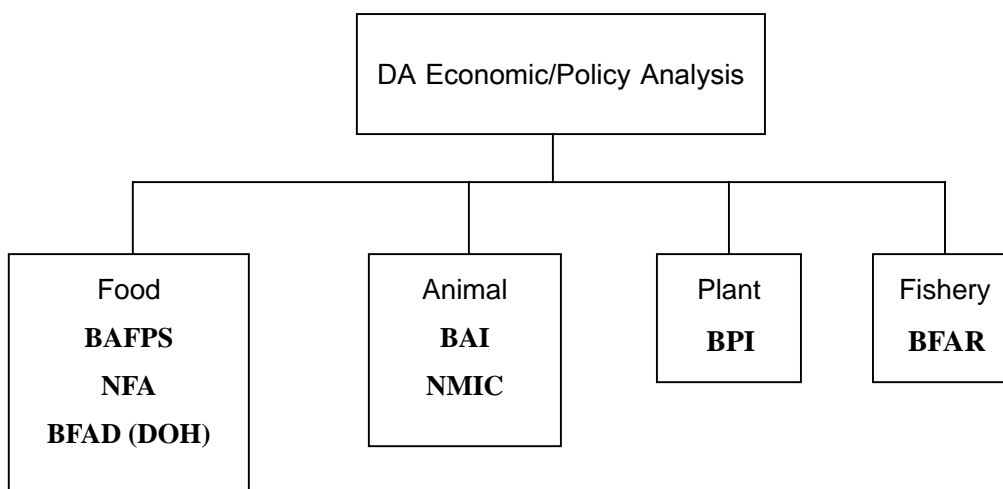
The Bureau of Animal Industry (BAI) has the task of to enforcing animal quarantine regulations, while the National Meat Inspection Commission (NMIC) undertakes regulation of distribution of animal product and by products. The Bureau of Plant Industry (BPI) and Bureau of Fisheries and Aquatic Resources (BFAR) are mandated to implement plant and fishery quarantine regulations, respectively. Other agencies such as the Food Development Center (FDC) under the National Food Authority (NFA) provides technical support with regard to technical service for food export.

The Agriculture and Fisheries Modernization Act (AFMA), enacted in 1997, mandated the centralization of the adoption and enforcement of SPS measures with the creation of the Bureau of Agriculture and Fisheries Product Standards (BAFPS). Although BAFPS initially expected to play a significant role in the process of formulating product standards, conducting research on product standardization along international standards and conducting regular inspection or enforcement of the standards, which clearly covers SPS measures, the government authority has not yet authorized a budget for the BAFPS. As a result, only seven staff including the Director are assigned and all other staff are seconded from attached agencies.

The DA has established the mandated Enquiry Point and National Notification Center within the Economic and Policy Analysis Division. This Division is in charge of country positions by integrating technical expertise from the concerned agencies and of collecting relevant information on other countries from the Agriculture Attaches of the Philippines Embassies overseas. The establishment of this Enquiry point in this DA division has been brought about by the incomplete organization of the BAFPS, which has been constrained by a lack of budget allocation.

In order to effectively harmonize the agricultural products in an environment of liberalized trade, implementing bodies for animal and plant health protection and quarantine need to overcome problems of fragmentation and inadequate institutional infrastructure.

Figure -2-2-2 Concerned agencies of SPS measures in the Philippines



2.2.4 Needs for Capacity Building

The Philippines actively participates in three international standard-setting bodies, namely the Codex Alimentarius, the Office of International Epizooties, and the International Plant Protection Convention. There have been a considerable number of training opportunities funded by the WTO, ASEAN (International Life Sciences Institute, Plant Quarantine Training Institute), International Livestock Research Institute and bilateral donors, such as Australia, China, US, Germany, Japan, Malaysia, Netherlands, South Korea, Sweden and Thailand.

DA Technical staff initially hold a B. Sc. or B. Econ degree, then pursue further studies for a master degree or PhD either domestically or abroad, with scholarship assistance from donor countries such as Japan and the US. The US has provided technical assistance under the PL 480, which funded government agricultural development projects in the Philippines. Among which, is education and training in various fields of agriculture. Through this fund, many DA staffs have received Fulbright scholarships to pursue higher degrees in the US. The Program has also provided trade-related training for human resources related agriculture, agribusiness, and trade related areas.

Beneficiaries of training opportunities work mainly in the headquarters of the respective agencies. The regional officers in charge of quarantine service currently have few opportunities for further training as the DA faces serious budget constraints concerning the training for the regions. The DA has specifically requested support for regional quarantine officers to participate in the planned Seminar.

2.3 General Agreement on Trade in Services (GATS) <Component 3>

2.3.1 Service Sector in the Philippines Economy

The Philippine economy posted a 5.5 percent and 4.5 percent real GNP and GDP growth, respectively, in 2003. Its performance was boosted by the services sector which expanded by 5.9 percent, driven mainly by the transport and communications, finance, trade (wholesale and retail) and private services subsectors. Agriculture, fishery and forestry grew at a slower pace of 3.9 percent, while the industry sector registered 3.0 percent. The services sector is again expected to maintain the lead in 2004, during which it is projected to grow by 5.5 to 6.3 percent.

During the period 2000 to 2003, the services sector has been the strongest source of employment (Figure II-2-3-1). It accounted for about 48 percent of the total employed in 2003, followed by agriculture (37 percent) and industry (15 percent). For this year, the services sector's share is targeted to increase to as much as 48.7 percent.

Table II-2-3-1 Philippine's Employment by Sector

	Employment ('000)				Growth Rate (%)			
	2000	2001	2002	2003	2000	2001	2002	2003
All Industries	27,453	29,155	30,063	30,627	-1.10	6.20	3.10	0.02
Agriculture	10,181	10,850	11,122	11,203	-5.50	6.60	2.50	0.70
Industry	4,454	4,713	4,695	4,838	-1.30	5.80	-0.40	3.10
Services	12,811	13,593	14,246	14,586	2.90	6.10	4.80	2.40

Source) Institute for Labor Studies- DOLE/ National Statistics Office/
National Economic and Development Authority

The Philippines has long been recognized as an exporter of competitive Filipino workers, from which it has benefited significantly thru foreign exchange remittances by overseas Filipino workers (OFW). As shown in Figure II-2-3-2, remittances from overseas employment rose from US\$ 6.05 billion in 2000 to US\$ 6.91 billion in 2003. These are projected to reach US\$ 7.8 billion in 2004. As a percentage of GNP, OFW remittances expanded from 7.6 percent in 2000 to 8.6 percent in 2002.

Table II-2-3-2 Contribution of Overseas Employment (2000-2003)

	Remittances from Overseas (in US\$ B)	As a Percentage of GNP
2000	6.05	7.6
2001	6.03	8.0
2002	7.19	8.6
2003	6.91*	

* As of November 2003

Source) Bangko Sentral ng Pilipinas, National Statistical Coordination Board

The foregoing indicates the services sector's magnitude of importance to the Philippine economy. The economic contribution and international competitiveness of different service sub-sectors could be further enhanced via the pursuit of services trade liberalization policies and continuous active Philippine participation in GATS negotiations.

2.3.2 Needs for Capacity Building

The Philippine government has made commitments in four of the twelve service subsectors (i.e., financial, telecommunication, tourism and transport services) under the WTO classification system. Requests by other WTO member-countries to expand these commitments pose challenges to continuously and effectively cope with technical and policy issues that arise during the "request and offer" negotiation process.

Dealing appropriately with the rounds of services trade negotiations thus requires efforts to build capacities. Along this line, the Philippine government recognizes the need to:

- (1) Enhance the general knowledge of concerned government agencies on the GATS and understand the complexities and flexibilities underlying the agreement;
- (2) Develop and build the capacity of government agencies and private entities concerned with/affected by the liberalization of the specific service sectors (e.g., transportation, tourism, energy and environment, and professional services); and

- (3) Conduct comparative studies on domestic laws, rules and regulations aimed at providing guidance to the Philippine government in determining areas for liberalization and its policy implications for strengthening competitiveness in services trade under the GATS framework.

With regard to item (1) above, the NEDA recognizes that upgrading the capacities of concerned government agencies with respect to the GATS should be a continuous undertaking owing to the comprehensiveness and complexity of the agreement, and given that the WTO rules on the international trade in services are by nature evolving.

For item (2), the Department of Transportation and Communication (DOTC) and Department of Tourism (DOT) have specifically expressed the need to enhance their understanding on the technical aspects of GATS negotiations, as well as the relationship between the GATS and a particular service industry's policies. Their main interests were identified as follows:

- a. How GATS can be utilized for strengthening competitiveness
- b. Further enhancement of competency of workers sent abroad (Mode-4)
- c. Current commitments and positions of other major WTO members
- d. Experiences of Japan and other WTO members in liberalizing service markets

With respect to item (3), comparative studies were requested. DOTC indicated its interest on the Philippine maritime and air transport service sectors in comparison with that of Japan, United States, the European Union and Thailand, and DOT on a comparison of the Philippine tourism sector with that of other ASEAN countries.

2.3.3 Present Situation of the Capacity Building for GATS

The Inter-Agency Committee on Trade in Services (IAC-TS) plays the key role in coordinating all matters relating to the implementation of the GATS, the liberalization of trade in services under the ASEAN and APEC, and entry into bilateral

agreements by the Philippines with another country on services trade. It is the venue for the discussion and formulation of Philippine positions for services-related negotiations in Geneva and elsewhere. The NEDA serves as the Chair and Secretariat of the IAC-TS which is composed of 23 government bureaus and agencies or departments as shown in Table II-2-3-3.

Table II-2-3-3 The Members of the Inter-Agency Committee on Trade in Services (IAC-TS)

Sectors (based on W120 classification)	Responsible authorities
1. BUSINESS SERVICES	
Professional Services	Professional Regulatory Commission
Other Services/ Services incidental to Mining	Mines and Geosciences Bureau (MGB) -Bureau under DENR
2. COMMUNICATION SERVICES	
Telecommunication Services	Department of Transportation and Communication (DOTC)
	National Telecommunications Commission (NTC) -Attached to DOTC
Audio-Visual Services	National Commission for Culture and Arts (NCCA) -Attached to DOT
3. CONSTRUCTION AND ENGINEERING SERVICES	Construction Industry Authority of the Philippines (CIAP) -Attached to DTI
4. DISTRIBUTION SERVICES	Department of Trade and Industry (DTI) Bureau of International Trade Relations (BITR) -Bureau under DTI Board of Investments (BOI)
5. EDUCATIONAL SERVICES	Commission on Higher Education (CHED) Technical Education and Skills Development Authority (TESDA)
6. ENVIRONMENTAL SERVICES	Department of Environment and Natural Resources (DENR) Environmental Management Bureau (MB) -Bureau under DENR
7. FINANCIAL SERVICES	
Insurance and insurance-related services	Insurance Commission -Attached to the Department of Finance (DOF)
Banking and other financial services	Securities and Exchange Commission (SEC) Bangko Sentral ng Pilipinas (BSP)
9. TOURISM AND TRAVEL RELATED SERVICES	Department of Tourism (DOT)
10. RECREATIONAL, CULTURAL AND SPORTING SERVICES	National Commission for Culture and Arts (NCCA) -Attached to DOT
11. TRANSPORT SERVICES	
Maritime Transport Services	Department of Transportation and Communication (DOTC) Maritime Industry Authority (MARINA) -Attached to DOTC
Air Transport	Air Transportation Office (ATO) -Attached to DOTC Civil Aeronautics Board (CAB) -Attached to DOTC
ENERGY SERVICES	Department of Energy (DOE)
MODE 4/MOVEMENT OF NATURAL PERSONS	Department of Labor and Employment (DOLE) Philippine Overseas Employment Administration -Attached to DOLE

Source) NEDA “MANDATES OF THE INTER-AGENCY COMMITTEE ON TRADE IN SERVICES (IAC-TS) MEMBERS”

The IAC-TS also functions as an information-sharing body and capacity improvement center. As focal point for formulating Philippine negotiating positions in Geneva, the NEDA calls the IAC-TS members to meetings whenever necessary to ensure that proper consultations have been undertaken by the concerned government agencies with the service sectors concerned prior to the negotiations; to update them on developments regarding the GATS and the on-going negotiations; and to clarify issues arising therefrom. The members are also invited to attend seminars and workshops organized with support from international donor organizations.

2.4 SG/AD Agreements <Component 4>

2.4.1 Present Situation of the Implementation of SG/AD Agreements

(1) Trade Remedy Enactment

The Philippines' legal framework related with anti-dumping and safeguard measures are developed on the existing acts and regulations as follows:

- Section 301, Part 2, Title II, Book I of the Tariff and Customs Code of the Philippines (provision on anti-dumping)
- Republic Act No. 7843 (Anti-Dumping Act, amending the above Section 301 in 1994)
- Republic Act No. 8752 (Anti-Dumping Act, further amending Section 301 in 1999)
- Implementing Rules and Regulations Governing the Imposition of an Anti-Dumping Duty under Republic Act No. 8752 (Joint Administrative Order No. 01, Series of 2000)
- Republic Act No. 8800 (Safeguard Measures Act, passed by Congress in July 2000)
- Joint Administrative Order No. 3 or the Implementing Rules and Regulations for RA 8800.

R.A. 7843 named the key government contact points of anti-dumping actions as the Secretaries of Finance, and Trade and Industry. Among other notable features of this Act was the creation of a three-member Special Committee on Anti-Dumping chaired by the Secretary of Finance. Co-members were the Secretary of Trade and Industry, and the Secretary of Agriculture (for agricultural products) or the Secretary of Labor (for industrial products). This Committee was empowered to decide on whether a violation of Section 301 had indeed taken place.

R.A. 8752, with further amendment to Section 301, was intended to bring the anti-dumping provisions of the Philippines in line with both the WTO standards outlined in Article VI of GATT 1994 and the Agreement Implementing Article VI of

GATT 1994 (the WTO Anti-Dumping Agreement).³ In addition, another goal in passing R.A. 8752 was the reworking of the anti-dumping provisions into a simpler and more practical legislation so as to more effectively deal with unfairly traded dumped imports. It also clarified the elements needed to be established (i.e., product comparability, price difference, material injury or threat thereof, and causal link). Greater responsibility was placed with the Tariff Commission, with the role of the Department of Finance reduced. In addition, a tight timeline for the conduct of the investigative process was set out and some provisions under R.A. 7843, such as the provision on the Special Committee on Anti-dumping, were repealed.

(2) Institutions

There are several key institutions involved in the Philippine trade remedy process. This is in line with the requirements of the WTO Agreements.⁴ These institutions are the Office of the President, the Department of Agriculture, the Department of Trade and Industry, the Tariff Commission, and (to a certain extent) Congress, the Department of Finance and the Bureau of Customs.

The Office of the President - the executive powers of government are vested in the President. Accordingly, the President shall have control of all the executive departments, bureaus, and offices, and shall ensure that all laws are faithfully executed. Incidentally, it is also the President who nominates the heads of the executive departments, with the consent of the Commission on Appointments. Aside from having the authority to request for the initiation of safeguard cases,⁵ the Office of the President seems to play no other direct role with in trade remedy cases. However, the significance of the Office of the President in such matters is related to the provisions of Article VI,

³ Art. XVI, Section 4 of the Marrakesh Agreement establishing the WTO states that each member shall ensure conformity of its laws, regulations, and administrative procedures with its obligations as provided for in the various WTO agreements (reiterated in Art. 18.4 of the Anti-Dumping Agreement). Art. 1 of the Anti-Dumping Agreement declares that anti-dumping measures shall be applied only under the circumstances provided for in Art. VI of GATT 1994 and pursuant to the investigations initiated and conducted in accordance with the provisions of the said Agreement.

⁴ Article 3 of the WTO Agreement on Safeguards states that “a Member may apply a safeguard measure only following an investigation by the competent authorities of that Member”; also footnote 3 of the WTO Anti-Dumping Agreement states that when the term “authorities” is used, “it shall be interpreted as meaning authorities at an appropriate senior level.”

⁵ Section 6 of RA 8800

Section 28.2 of the Constitution, which provides the President with the delegated power to fix tariff rates and export quotas.

Congress - is the body vested with the legislative power, and is composed of a Senate and House of Representatives. With regard to trade remedy matters, aside from the fact that it is the body which creates related legislation, Congress has no other role other than the right to request the DA or DTI Secretary to initiate proceedings for safeguards investigations upon resolution of the House or Senate Committee on Agriculture, or House or Senate Committee on Trade and Commerce.⁶

Department of Agriculture - the mandate of the DA is essentially to ensure that the interests of the entire agriculture sector are upheld.⁷ According to Philippine trade remedy laws, the DA Secretary shall apply measures in the case of agricultural products; agricultural products being defined as those commodities under Chapters 1 to 24 of the Harmonized System of Commodity Classification as used in the Tariff and Customs Code of the Philippines.⁸ It is the Trade Remedy Office (TRO) of the DA, however that directly handles the preliminary investigation of a trade remedy case.

Department of Trade and Industry - by reason of its history, nature, and the experience of its personnel, the DTI has been considered as the lead agency in matters dealing with international trade. The inputs and recommendations of the DTI carry great weight in trade related issues and it is one of the prime agencies sitting in the Tariff and Related Matters committee.⁹ It is the Secretary of the DTI that imposes trade remedy measures for non-agricultural products. The Bureau of Import Services (BIS) of the DTI is the office directly tasked with conducting preliminary investigations for such trade remedy cases. Incidentally, the DTI Secretary (as well as the DA Secretary) has the authority to initiate anti-dumping or safeguard measures.

Tariff Commission - the Tariff Commission (TC) is an agency under the National Economic and Development Authority. Its responsibility is to provide data and technical support on economic matters to various government bodies, such as the Office of the President, Congress, the NEDA, Bangko Sentral ng Pilipinas, the Department of

⁶ Section 6 of RA 8800

⁷ Philippine Peasant Institute, *When Tariffs Rule*, 1998, p. 35

⁸ Section 4.a of RA 8800

⁹ Philippine Peasants Institute, *ibid*, pp. 35-36

Finance, and other policy-making bodies.¹⁰ The Tariff Commission is also responsible for conducting hearings and making recommendations concerning Section 401 and 402 proceedings.¹¹ Its recommendations in this regard are forwarded to the NEDA and the TRM, and subsequently, upon further deliberation, to the President. With respect to trade remedies, the TC is tasked with conducting formal investigations and formulating either positive or negative determinations. The TC is also responsible for recommending specific measures in the case of a positive determination. The chief officials of the TC are the Chairman and two Member Commissioners, all of whom are appointed by the President.

The Department of Finance and Bureau of Customs - the DoF and the BoC are primarily responsible for carrying out or implementing the imposition of trade remedy measures as decided upon by the DA or the DTI. Thus, with regard to provisional measures, the Secretary (of either the DA or DTI) shall immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs authorizing the imposition of provisional anti-dumping or safeguard measures. Depending on the nature of the measures recommended by the TC in cases of its positive determinations, the Secretary (either of the DA or DTI) shall request the Secretary of Finance to direct the Commissioner of Customs to collect the requisite duties.

(3) Philippine Experiences of SG and AD

(a) Anti-Dumping Measures

Philippine AD actions have been governed by the previously mentioned three legislations: 1) Section 301, Part 2, Title II, Book 1 of the Tariff and Customs Code of the Philippines (16 cases, 1989-1994), 2) R.A. 7843 (21 cases, 1996-1999), and 3) R.A. 8752 (5 cases, since 1999). Among the total of 43 cases, 12 cases resulted in the imposition of AD duties, while the rest of the cases were either dismissed or amicably settled. The cases filed with the BIS-DTI under each legislation are listed in Tables II-2-4-1, II-2-4-2, and II-2-4-3.

¹⁰ Sections 505 and 506 of the Tariff and Customs Code

¹¹ see Sections 401 (“Flexible Clause”) and 402 (“Promotion of Foreign Trade”)

Table -2-4-1 AD cases filed under Section 301, Tariff and Customs Code of the Philippines (1989-1994)

TCCP Sec. 301 / Prior to R.A. 7843				
	Product	Country	Year Filed	Outcome
1.	Safety Matches	Indonesia	1989	Duties Imposed
2.	Dull Coated Book Paper	Singapore	1990	Amicably Settled
3.	PVC Resin	Korea	1990	Amicably Settled
4.	Galvanized Malleable Coated Fittings and Zinc Coated Fittings	China	1993	Duties Imposed
5.	Magnesite Chrome Basic Refractory Bricks	Thailand	1993	Duties Imposed
6.	Newsprint	Finland	1993	Duties Imposed
7.	PVC Resin	Korea	1993	Duties Imposed
8.	Aluminum Foils	Korea	1994	Withdrawn by protestant
9.	Bond Paper	Malaysia	1994	Dismissed: lack of evidence
10.	PVC Resin	Indonesia	1994	Dismissed: technicality, lack of evidence
11.	Terry Toweling	Hong Kong / China	1994	Duties Imposed
12.	Calcium Carbide	PROC	1994	Dismissed: no injury
13.	Carbon Black	Taiwan	1994	Dismissed
14.	Monosodium Glutamate (MSG)	Indonesia / Taiwan	1994	Dismissed: no injury
15.	PVC Floor Covering	Thailand	1995	Dismissed: no injury
16.	Fluorescent Ballast	China	1995	Dismissed: lack of evidence

Source: BIS

Table -2-4-2 AD cases filed under R.A. 7843 (1996-1999)

Under R.A. 7843				
	Product	Country	Year Filed	Outcome
1.	Figured glass	Thailand	1996	Not investigated: lack of evidence
2.	Refractory bricks	Germany	1996	Duties Imposed
3.	Silico manganese	PROC	1997	Not investigated: lack of interest
4.	Sodium tripolyphosphate	PROC	1997	Duties imposed
5.	Tinplates	Korea	1997	Dismissed: lack of merit
6.	Prime steel wire rods	Russia	1997	Dismissed: insufficient evidence
7.	Clear float glass	Thailand	1998	Not investigated: lack of evidence

8.	Cold rolled steel coils and sheets	CIS/Ukraine	1998	Dismissed: lack of merit
9.	Cold rolled steel coils and sheets	Russia	1998	Suspended imposition; Protestant not operating
10.	Cold rolled coils and sheets (1 st case)	Taiwan	1998	Dismissed: no material injury
11.	Hot rolled coils and sheets	Russia	1998	Dismissed: no material injury
12.	Hot rolled coils and sheets	CIS/Ukraine	1999	Dismissed: negligible volume
13.	Steel billets	Ukraine	1999	Not investigated: negligible volume
14.	Steel billets	Russia	1999	Suspended imposition: Protestant not operating
15.	Polypropylene resins	Korea	1999	Dumping duty imposed but subsequently lifted
16.	Clear float glass	Malaysia	1999	Duties imposed
17.	Clear float glass	Indonesia	1999	Duties imposed
18.	Tinted float glass	Indonesia	1999	Dismissed: no material injury
19.	Cold rolled coils and sheets (2 nd case)	Taiwan	1999	Dismissed: no material injury
20.	Cold rolled coils and sheets	Malaysia	1999	Suspended imposition: Protestant not operating
21.	PVC Floor Covering	Thailand	2000	Dumping duty imposed but subsequently lifted

Source: BIS/TC

Table -2-4-3 AD cases filed under R.A. 8752 (1999 -)

Under R.A. 8752				
	Product	Country	Year Filed	Outcome
1.	Cement	Taiwan	2000	Withdrawn by Protestant
2.	Clear figured glass	China	2000	Dismissed
3.	Clear figured glass	Korea	2000	Not investigated: lack of merit
4.	Corrugating medium, water-based	Thailand	2002	Dismissed
5.	Sulfuric acid, technical grade	Japan	2003	Ongoing

Source: BIS/TC

(b) Safeguard Measures

All the general safeguard cases were filed with the Department of Trade and Industry, with the exception of the application for tomato paste which was filed before the Department of Agriculture. The Department of Agriculture formed a team in August 2000 to handle the cases of special safeguards. There are seven cases for general safeguards, and two cases for special safeguards, all of which have occurred since 2001. Among nine cases in total, four cases involved duty imposition, two cases were dismissed, and three cases are under investigation. Listed below in Table II-2-4-4 are the products for which cases have been filed before the BIS-DTI and the TRO-DA.

Table -2-4-4 SG cases (general and special)

A. General Safeguards			
	Product	Year Filed	Outcome
1.	Steel Billets	2001	Not investigated: insufficient documentation
2.	Cement	2001	Duties imposed following Court of Appeals decision
3.	Ceramic Tiles	2001	Duties imposed
4.	Tomato Paste	2001	Dismissed: no causal link
5.	Figured Glass	2003	Ongoing
6.	Glass Mirrors	2003	Ongoing
7.	Float Glass	2003	Ongoing

Source: BIS/DA TRO

B. Special Safeguards			
	Product	Year Filed	Outcome
1.	Onions	2002	SSG Duties imposed
2.	Chicken Meat	2002	SSG Duties imposed

Source: DA TRO

The first safeguard case that reached the Tariff Commission was the petition to impose general safeguards on cement imports, and was an offshoot of an earlier anti-dumping action against cement that was dismissed. As the first safeguards case to go past the formal investigation stage, the cement case attracted public scrutiny and significant media attention.

Box -2-4-1 Summary of the Cement Court Case

In January 2001, Philippine Cement Manufacturer's Corporation (Philcemcor), on behalf of the local cement industry, filed with the Department of Trade and Industry an application for safeguard measures on imports of gray Portland cement pursuant to Republic Act No. 8800 (the Safeguards Law).

In an evaluation report dated 28 May 2001, the DTI Secretary found *prima facie* evidence to conduct preliminary investigation to determine whether cement was indeed being imported into the Philippines in increased quantities which were causing serious injury to the domestic industry. A petition for preliminary injunction was filed before the Regional Trial Court by the cement importers to stop the proceedings. Although this petition was granted, this was later overturned by the Court of Appeals.

The DTI Secretary issued a Preliminary Determination Report on 07 November 2001 on the Safeguard Measures Application of the Cement Industry finding that the increased imports of cement had caused serious injury to the domestic industry.

As a result of the DTI's request for a formal investigation to determine the merits of imposing a definitive safeguard measure on cement imports, the Tariff Commission held a preliminary conference, followed by public consultations from 28-31 January 2002. After all the interested parties had filed their pleadings in support of their respective positions, the Tariff Commission issued a Report dated 13 March 2002. The Report recommended that no definitive general safeguard measure be imposed on the importation of gray Portland cement.

The DTI Secretary, averring that though he disagrees with the with the Tariff Commission's conclusions he is nevertheless bound by the same, and issued a Decision dated 05 April 2002 based on the Tariff Commission's recommendations.

Philcemcor filed a petition before the Court of Appeals assailing the Decision of the DTI Secretary, arguing that the DTI Secretary has the authority to review (and perhaps reverse) a negative determination of the Tariff Commission under RA 8800.

The Court of Appeals, in its Decision dated 05 June 2003, declared that the Tariff Commission, whose acts do enjoy the presumption of validity, however, do not necessarily constitute a final decision on the matter and are thus still merely recommendations. The DTI Secretary, therefore, has the power to exercise his discretion to review and render a final decision, either affirming or reversing the Report of the Tariff Commission (regardless of whether the Tariff Commission's Report is negative or positive). The Court of Appeals based its rulings on a reading of RA 8800 and the Implementing Rules, the legislative records for RA 8800, and by applying the rules of statutory construction.

The DTI Secretary thereafter issued a Decision dated 25 June 2003 imposing definitive safeguard measures on imported Portland Cement.

(c) AD/SG cased filed against the Philippines

With regard to anti-dumping cases filed against Philippine companies, data to

come by regarding this matter was very difficult, as no records were formally kept by the government. The list¹² below in Table II-2-4-5 is therefore admittedly as partial in nature but would at least provide a more complete picture of the anti-dumping process where the Philippines is concerned. There have been six anti-dumping cases where duties have been imposed, mostly initiated by developed countries. No data for safeguard cases involving the Philippines as respondent was available.

Table -2-4-5 AD cases filed against the Philippines

List of Anti-Dumping Cases Filed Against the Philippines				
	Product	Country Imposing the Measure	Year Filed	Outcome
1	Stainless steel butt-weld pipe fittings	United States	1999	Duties imposed in 2001, still in effect
2	3.5" micro magnetic disks	European Community	1995	Dismissed in 1996 for lack of evidence
3	Gas-fuelled, non-refillable flint lighters	European Community	1994	Duties imposed from 1997-2002
4	Portland Cement and Clinker	Taiwan	1998	Duties imposed 2001
5	Clear float glass 3-12 mm	Australia	1992 (imposed)	Duties reviewed and adjusted several times until revoked 2002
6	Replacement automotive lead-acid batteries	Australia	1991 (imposed)	Duties imposed

(d) Opinions of Public and Private Sectors

Opinions on the Philippine SG/AD experiences were collected through interviews with various members of the private sectors, including representatives of the chemical, automotive, cement, steel, sugar, and plastics sector, as well as representatives from two of the main Philippine industry associations.

A frequent comment was the difficulty they felt in dealing with feel the Philippine government agencies in charge of trade remedy cases, due to the burden in preparing the documentation required by the government. The gathering of data, particularly for anti-dumping cases (in gathering of data for the “normal value” of the

¹² The list was culled from two sources: the WTO website and a study made by Raul L. Cordenillo, *The Application of WTO Trade Remedies in Major Markets - The EC and US: Problems Experienced by Philippine Exporters*, 3 ALPR 1

imported like product) proved very difficult for participants that were past applicants to such cases. It seems that the numbers and data required are truly not accessible and such problems are compounded by the perceived refusal of the appropriate government agencies to assist in alleviating such difficulties.

Other comments indicate the perception of a lack of political will to enforce the trade remedy measures. In relation to this, private sector representatives commented that Philippine trade remedy laws (i.e., RA 8752 and 8800) seem to have provisions that are biased towards promoting the tenets of freer trade and thus the threshold for the imposition of trade remedy measures is unduly high. It was also stated that there is an obvious lack of concrete precedent that could serve as a guide or standard in relation to determinations for trade remedy cases. However, from a third party point of view, these comments seem to compound the common problem felt by many of the users that trade remedy laws are highly complex and contain procedures that are substantially expensive to negative, in terms of human resources and time. Finally, the relationship of the judicial system in the trade remedy process seems to be unclear to most users.

Prior to the Survey by the TA Team, there was a noteworthy meeting regarding the anti-dumping and safeguards laws of the Philippines. An Anti-Dumping Forum was conducted by the Federation of Philippine Industries, Inc. on 21 February 2003. The forum was attended by representatives of the paper, chemical, glass, cement, pipe, wire, shoe, and towel industries, as well as representatives from the DTI. The significant points raised were as follows:

- RA 8752, to the detriment of local industry, seems to focus on specific suppliers/exporters and brands;
- The burden of proof is placed on the applicant domestic industry to show that dumping causing injury is present;
- The process of filing anti-dumping and safeguard cases - and the gathering of data involved - is very tedious and cumbersome; and
- General unhelpfulness of the government agencies involved;

In addition, a statement of experiences of the petrochemical industry, which previously filed for anti-dumping measures under RA 8752, contained comments as follows:

- The “prerogative of the Tariff Commission not to impose the dumping duty even after all the requirements for its imposition have been complied with, in consideration for the welfare of the consumers, the general public, or the other related industries”. This provision is not required under the WTO Agreements and borders on the ridiculous. The Tariff Commission is not in the proper position and has no capability to determine what is good for the welfare of the public;
- The “imposition of bond before filing petition” is not required under our international commitments and will unnecessarily disadvantage the local industries;
- “Enormous amount of time and resources to initiate and pursue” a trade remedy case; and
- Lack of lawyers with the requisite knowledge and experience in trade remedies.
- Difficulty in acquiring data with which to either check the veracity of the information presented by anti-dumping or safeguard measure applicants.
- There is an apparent burden of political pressure that is brought to bear on anti-dumping and safeguard proceedings.
- Importers and consumer groups having the perception that they are at a disadvantage due to the political sensitivities equated with supporting domestic industry.

It must be noted that with regard to the comments made by the public sector, the general response was the seeming need for greater efforts to be exerted by the private sector in understanding WTO and Philippine trade remedy rules. Most of the complaints made by the private sector, particularly domestic industries, seem to be without strong basis if held up against the principles prevailing in the multilateral trading system and of those present in RA 8752 and 8800. It was also stated that the private sector perhaps needs to gain greater support in terms of legal, economic, and accounting proficiencies in relation to applications for trade remedy measures. Finally, it was said that more effective ways in making the private sector understand and manage expectations with regard to trade remedy cases should probably be undertaken by the government (and even academe) to forge more synergy between the public and private

sector in relation to such cases.

2.4.2 Needs for Capacity Building

(1) General Tendency

Safeguard and anti-dumping measures are often confused with one another, sometimes understandably so, as they both deal with imposing measures against foreign imports, usually outside the regular tariff protection system. Public discussions sometimes use these two terms interchangeably and there have been cases in the past when an anti-dumping application has been withdrawn and re-filed as a safeguard petition. However, there is a clear difference between these two trade remedies and this must be carefully noted since the procedure chosen will have a substantial impact on the outcome of the applications, as well as on the consequences of the imposed measures.

Therefore, WTO member countries are required to correctly understand procedures and definitions stipulated in each Agreement, and acquire capacity to undertake these measures appropriately. Countries tending to become the targets of these trade remedies also need to acquire the capacity to examine the validity of remedies initiated against them, and appeal to WTO-DSB when necessary.

(2) Needs of the Philippine Government

The BIS of the DTI, the Department of Agriculture (DA) and the Tariff Commission (TC), which are the authorities responsible for AD and SG measures, need to acquire practical knowledge of SG measures, because of their limited experience in handling SG cases. At the same time, they need to acquire knowledge on some particular points in the AD procedure, like determining material injury, causal linkages between dumping and injury and handling overseas investigations.

As noted above, AD and SG measures are often confused with one another, and there was indeed a case in the Philippines when an anti-dumping application was withdrawn and re-filed as a safeguard petition (see cement case, Box -2-4-1). While it should not be concluded that this case was caused by an inappropriate confusion of these measures without careful examination, it is obvious that the above needs of the Philippine government necessarily entails a correct understanding of the nature and

logic of the two measures, not only the procedural similarities and differences.

Another aspect implied by the government's needs is the public interest. The Survey on the Philippine's experiences explained in the previous section reveals that there is a perception gap between the public and private sectors concerning 'trade remedies for whom?' The Philippine government has not seemed to have succeeded in persuading the private sector as to the appropriate purpose of SG/AD measures. The Capacity Building Program therefore paid attention to developing a well-balanced notion of the public interest among the related government agencies, who have accountability for their policies.

2.5 The Agreement on Technical Barriers to Trade (TBT Agreement)

< Component 5 >

2.5.1 Needs for Capacity Building for TBT

The Agreement on Technical Barriers to Trade (TBT) is aimed at avoiding unnecessary obstacles to trade which result from the abuse of technical standards. Basic principles of the Agreement include non-discrimination and national treatment, transparency, harmonization of standards and mutual recognition of conformity assessment procedures. The Agreement also encourages member countries to set up national enquiry points to answer enquiries from other member countries and interested parties.

After the negotiations during the Uruguay Round, the TBT Agreement became an integral part of the WTO Agreement. Article 15.4 of the TBT Agreement stipulates that the state of TBT Agreement operations and implementation shall be reviewed every three years as of the entry into force of the WTO Agreement. The second triennial review was accordingly undertaken in 2000, directing that technical assistance be given to developing countries and calling for a survey of their technical assistance needs. However, in the case of many developing countries, consideration as to whether their technical regulations, standards and conformity assessment procedures are TBT-compliant has only been undertaken in response to the indication of problems raised by other countries, so there has been little incentive to launch institutional adjustments.

Factors causing developing countries' difficulties in implementing the TBT Agreement include a lack of administrative capacity in terms of developing standards and establishing conformity assessment systems, and also a shortage of personnel. Because few domestic companies in developing countries have the ability to develop standards, public institutions must play a major role in standardization. Developing standards and formulating conformity assessment systems require a wide range of stakeholders, including policy-makers, engineers and inspectors. Human resources with necessary technical expertise tend to be limited in number in developing countries. Additionally, active participation in international standardizing activities in ISO or IEC is one of the most important issues for developing countries in upgrading their economic competitiveness. Especially in the case of the Philippines, while a large part

of exports consists of industrial products, such as electric and electronic products, these products often face various technical barriers to trade in the overseas market.

Considering the issues mentioned above, enhancing capacity on the TBT Agreement is considered as priority area for the Philippines, both for the government and private sectors.

2.5.2 Necessity of Assistance for the Philippine Government regarding the TBT Agreement

According to the Agreement, member countries should establish a national notification authority that notifies proposed technical regulations to WTO, as well as a national enquiry point to answer all enquires from other member countries on technical regulations, standards and conformity assessment procedures, and upon request, to provide related materials. In the Government of the Philippines, The Bureau of Product Standards (BPS), established under the Department of Trade and Industry (DTI) is filling the roles of national notification authority and national enquiry point. BPS, however, has not gained enough capacity to coordinate relevant government organizations in charge of technical regulations, or to notify the draft technical regulations to the TBT Committee. Therefore, BPS needs to have technical assistance for enhancement of its capacity to in order to fully understand the TBT Agreement, and also for revitalization of a national coordinating committee in which all stakeholders discuss TBT issues, by strengthening the coordinating capacity of BPS.

2.5.3 Present Situation of the TBT Implementation in the Philippines

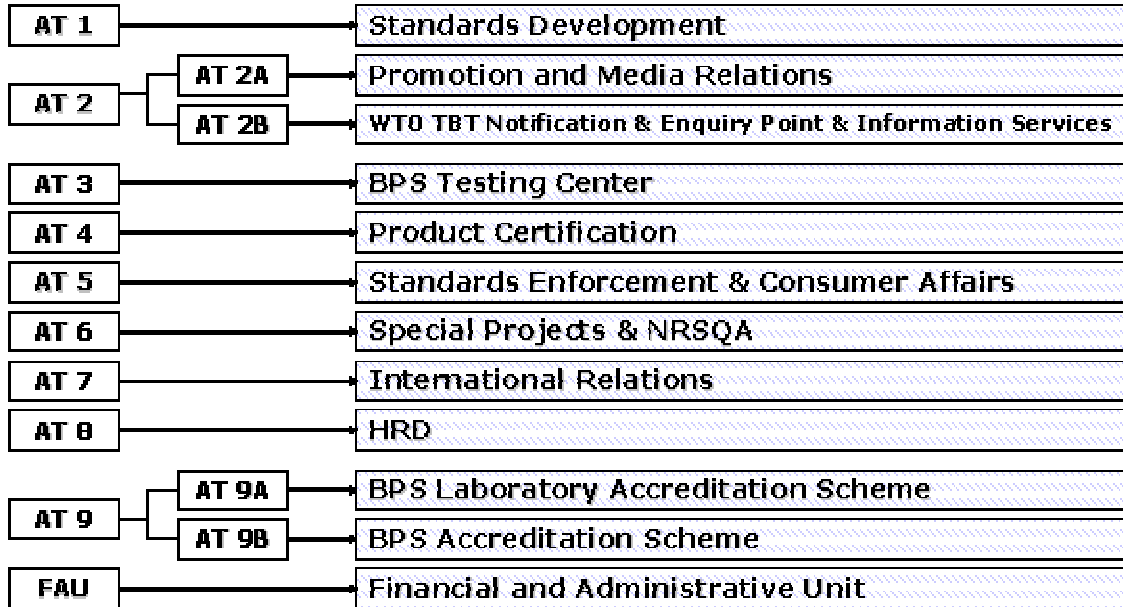
(1) Role and Structure of Bureau of Product Standards

Bureau of Product Standards (BPS) is the only national standardization body in the Philippines, established by the Standardization Law of the Philippines (Republic Act 4109/1964) under the Department of Trade and Industry (DTI). BPS has been mandated to develop, promote, and implement the Philippine National Standards (PNS) and coordinate standardization activities in the country.

The bureau consists of nine Action Teams (ATs), including four sub-action teams, and one unit. Among these teams, AT 2B is acting as the WTO/TBT Notification

and Enquiry point & Information services.

Figure -2-5-1 BPS Organization



Note: AT is abbreviation of Action Team.

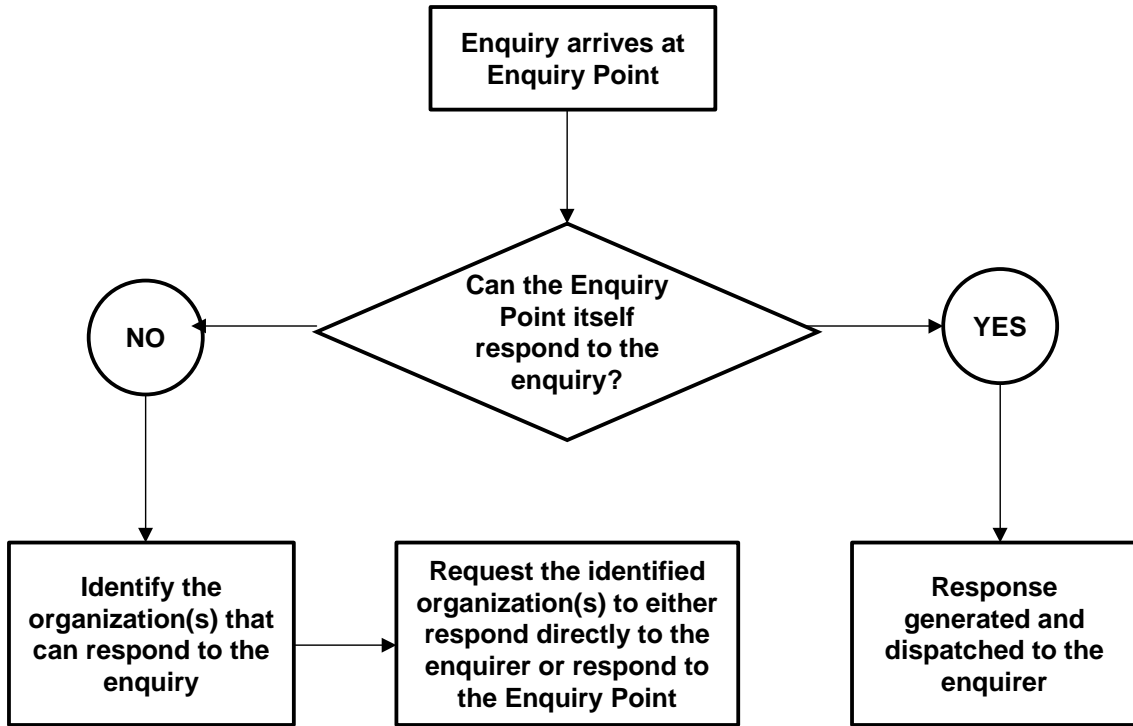
Source: BPS

(2) Role of BPS as national enquiry point of the TBT Agreement

At present, there are only two officers who are engaged in implementing the TBT Agreement within the AT 9B of BPS. Moreover, these two officers are also engaged in information services regarding standards (e.g. library services, sales, technical services to Exporters, report preparation, and website/database preparation/maintenance). As a result of this heavy workload, BPS is facing difficulty in efficiently implementing the TBT Agreement, especially as a national enquiry point.

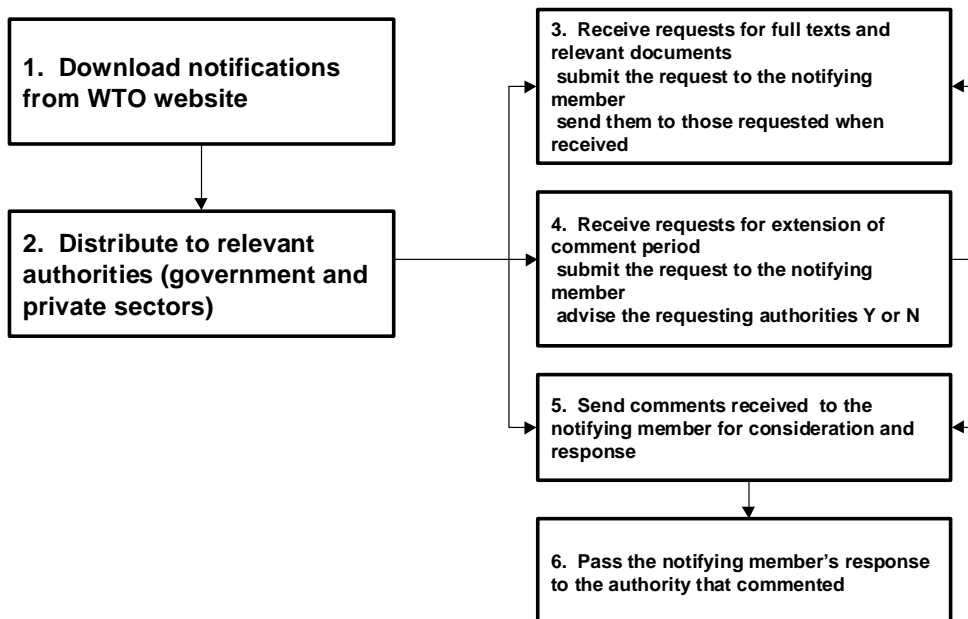
Since the BPS is the only National Standardization Body in the Philippines and the WTO/TBT national enquiry point, the implementation of and coordinating work regarding the TBT Agreement fall under its responsibility. This coordination work, however, is not as efficient and effective as it should be, due to a lack of human resources.

Figure -2-5-2 Flow of Incoming Enquiries to the Philippines



Source: Presentation material of Ms Campomanes (BPS) at Workshop 1 held in August 2003

Figure -2-5-3 Process Flow for Notification Dissemination in the Philippines



Source: Presentation material of Ms Campomanes (BPS) at Workshop 1 held in August 2003

TBT-related enquiries and notifications from other WTO member countries have been circulated for comments to various stakeholders in the Philippines, including exporters, regulatory authorities, industry associations, testing and calibration laboratories. In circulating these enquiries and notifications, each piece of information will be (1) sent directly to each stakeholder concerned by e-mail, (2) posted on the “Standards Alert” column on the *Tradeline Philippines* website¹³, and finally (3) disseminated through the *BPS Current Awareness Bulletin* in hardcopy.

As of the end of March 2003, the BPS has developed a total of 2,005 Philippine National Standards (PNS). Of these standards, 61% have been aligned with international standards.

2.5.4 Participation in international standardizing/conformity assessment activities

(1) ISO/IEC Participation

As an ISO-member body, BPS has participated in international standards development. BPS, on behalf of the Philippine government, is a participating member in 26 ISO Technical Committees (ISO/TCs) and an observer-member in 45 ISO/TCs. In addition, the BPS represents the country in six IEC/TCs as participant-member and two IEC/TC as observer-member.

Table -2-5-1 Philippines’ Participation in ISO Technical Committees

Participant –Member

TC No.	Title
5	Ferrous, metal pipes & metallic fittings SC 10-Metallic flanges and their joints
6	Paper, board & pulps
11	Boilers & pressure vessels
17	Steel
22	Road vehicles
25	Cast iron and pig iron (SC 1- Malleable cast iron)
34	Food products SC 3 - Fruits & vegetable products SC 4 - Cereals and pulses SC 15 - Coffee

¹³ <http://tradelinephil.dti.gov.ph/betp/main>

45	Rubber and rubber products SC 2 - Testing and analyses SC 3 - Raw materials (including latex) for use in the rubber industry SC 4 - Products (other than hoses)
51	Pallets for unit load method of materials handling WG 2 - Methods of test for pallets WG 4 - Pallets – slip sheets WG 6 - Pallets dimensions WG 7 - Quality components, assembly & repair
58	Gas cylinders
59	Building construction (SC 8- adhesive/sealants)
74	Cement & lime
94	Personal safety-protective clothing & equipment
122	Packaging
135/SC 7	Non-destructive testing
138	Plastic pipes fittings & valves for the transport of fluids
146	Air quality
147	Water quality
176	Quality management & quality assurance
181	Safety of toys
183	Copper, lead & zinc ores & concentrates
198	Sterilization of health care products
201	Surface chemical analysis SC 4 - depth profiling SC 6 - secondary ion mass spectrometry SC 8 - glow discharge spectroscopy
207	Environmental management SC2 - environmental auditing and related environmental Investigations
ISO/IEC JTC1/SC 31	Data capture
ISO/IEC JTC1/SC 28	Office equipment

Observer –Member

TC No.	Title
1	Screw threads
2	Fasteners
4	Rolling bearings
21	Equipment for fire protection and fire fighting
23	Tractors and machinery for agricultural and forestry
25	Cast iron and pig iron
29	Small tools
31	Tires, rims and valves
33	Refractories
34	Food products SC 5 - Milk and milk products SC 11 - Animal and vegetable fats and oils SC 8 - Tea SC 12 - Sensory analysis SC 10 - Animal and feeding stuffs
35	Paints and varnishes

38	Textiles
44	Welding and allied processes
55	Sawn timber and sawlogs
61	Plastics
63	Glass containers
68	Banking, securities and other financial services
86	Refrigeration
89	Wood-based panels
91	Surface active agents
126	Tobacco and tobacco products
136	Furniture
137	Sizing system designation and marking for boots and shoes
155/SC1 &5	Nickel & nickel alloys
156	Corrosion of metals and alloys
159	Ergonomics
162	Doors and windows
163	Thermal insulation
166	Ceramic ware, glassware and glass ceramic ware in contact with food
180	Solar energy
186	Cutlery and table and decorative metal hollow-ware
189	Ceramic tile
191	Animal (mammal) traps
199	Safety of machinery
201	Surface chemical analysis
202	Microbeam analysis
203	Technical energy systems
204	Transport information and control systems
205	Building environment design
206	Fine ceramics
209	Cleanrooms and associated controlled environments
211	Geographic information/geometrics
213	Dimensional & geometrical product specifications and verification
JTC 1	Information technology
ISO/IEC	Documents related to electrical products

Table -2-5-2 Philippines' Participation in IEC Technical Committees

P-Member

TC No.	Title
20	Electric Cables
23	Electrical accessories
34	Lamps and related equipment
59	Performance of household electrical appliances
61	Safety of household and similar electrical appliances
100	Audio, video and multimedia systems and equipment

O-Member

TC No.	Title
2	Rotating machinery
55	Winding wires

(2) Participation in other International Bodies

BPS participates in the activities of the following frameworks:

- a) International Laboratory Accreditation Cooperation (ILAC)
- b) International Accreditation Forum (IAC)
- c) Codex Alimentarius Commission (CAC)

(3) Regional Participation

BPS has been actively participating in the following regional fora:

- a) Pacific Accreditation Cooperation (PAC)
- b) Pacific Area Standards Congress (PASC)
- c) Asia Pacific Laboratory Accreditation Cooperation (APLAC)
- d) Asia Pacific Metrology Programme (APMP)
- e) Asia Pacific Legal Metrology Forum (APLMF)
- f) ASEAN Consultative Committee for Standards and Quality (ACCSQ)
- g) Asia-Pacific Economic Cooperation (APEC) Sub-committee on Standards and Conformance (SCSC)

(4) MRA/MOU

The Philippines has concluded Mutual Recognition Agreements (MRAs) and Memorandums of Understanding (MOUs) with/among the following partners.

- Australia (SAQAS) for recognition of audit services
- Indonesia (BSN) for product certification and approval scheme
- Japan (JET) for factory inspection and product tests
- APEC MRA on Electrical and Electronic Equipment – Part 1 (Information Exchange)
- APEC MRA on Toy Safety

- APEC MRA on Food Recalls
- PAC MLA on Quality Management System
- IAF MLA on Quality Management System

2.5.5 Past capacity building activities in the Philippines

BPS once held a one-day awareness seminar for local stakeholders on the TBT Agreement for local stakeholders. This was conducted during National Standards Week.

2.6 Formulation of Action Plan <Component 6>

The major objectives of this program, as a whole, is to provide bases for the sustainable capacity building activities by the Philippine counterparts' own initiative even after the Technical Assistance Program, which includes human resource development and strengthening institutional capacity of each counterpart. Thus, this component (Action Plan) is designed to focus on providing additional momentum to substantiate further continuous and sustainable activities for capacity building so that the result of input from this Program with assist the Philippine Government's efforts at self reliance. In addition to the TA activities in each component, this component is to provide appropriate suggestions on future utilization and applicability of the inputs from the program, including the design and operation of the programs, and directions for its institutionalization process including horizontal development into other WTO Agreements and FTA related subjects.

As the specific directions for further actions concerning individual component areas are highlighted in the recommendations of each respective component, this component is aimed to provide an overall action plan from a comprehensive point of view to suggest continuous and sustainable approaches for further capacity building activities. As was agreed at the inception meeting, the Action Plan in this component is in the nature of suggestions and check points on the methodology resulting from an examination of the programs and activities provided in the scope of this project.

(1) Assistance Methodology

(a) Holding of Comprehensive Seminars

In this component, two comprehensive seminars were held: a Kick-off Seminar at the beginning and a Wrap-up Seminar toward the end of project. The former was planned to highlight overall issues that are in the Government of the Philippines' national interests on the implementation of rights and obligations regarding WTO Agreements, and to formulate common perspectives among government officials on benefits from the multilateral trading system, while the latter meeting was planned to share and formulate common perspectives on a review of programs and recommendations by respective component.

(b) Designing an Action Plan for further overall Capacity Building Activities

Through monitoring the programs provided in respective components, essential elements of planning and operation for sustainable capacity building activities were identified and studied to construct an action plan to serve for further overall activities drive. The Action Plan was formulated based on recommendations, in a forum of actions to be taken in short, medium and long-term.