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DG TRADE (G/3 – Market Access, Industry, Energy and Raw Materials)

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**NOTE FOR THE ATTENTION OF THE TRADE POLICY COMMITTEE**

**SUBJECT:** *EU-Philippines: Questionnaires on a Free Trade Agreement*

**ORIGIN:** *European Commission, DG TRADE (G/3 – Market Access, Industry, Energy and Raw Materials)*

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**OBJECTIVE:** *For information*

**REMARKS:** DG Trade has prepared two questionnaires to give stakeholders and interested parties the opportunity to provide information on trade matters in the agreement between the EU and the Philippines (FTA). The present questionnaires aim at providing the European Commission with information to establish priorities and to take decisions throughout the negotiating process and includes detailed questions in order to capture all possible issues related to the EU's trade interests in the Philippines.

Delegates will find enclosed the questionnaires that have been published on the DG Trade website at the following link:

<http://trade.ec.europa.eu/consultations/index.cfm>

Deadline for replies is 30th April 2016.

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## **Objective of the consultation**

On 22 December 2015 the European Commission announced the launch of Free Trade Agreement (FTA) negotiations with the Philippines. Bilateral negotiations with the Philippines are the fifth to be launched with a member of the Association of Southeast Asian Nations (ASEAN) – following the launch of negotiations with Singapore (2010), Malaysia (2010), Vietnam (2012) and Thailand (2013).

The Philippines is one of the 10 members of the ASEAN and, with a GDP of €260 billion in 2014, the fifth largest economy in the region. The Philippine economy has more than doubled its size in the last decade and consolidated itself as one of the fastest growing economies in Southeast Asia (6.1% GDP growth in 2014). With a population of over 100 million it is also the second most populated country in ASEAN.

The Philippines continues to work with the rest of the ASEAN Member States in deepening economic integration in the region under the ASEAN Economic Community –that was formally established on 31 December 2015. As part of ASEAN, the Philippines has concluded five regional FTAs (China, India, South Korea, Japan, and Australia and New Zealand) and is engaged in the negotiation of the Regional Comprehensive Economic Partnership (RCEP) that aims to consolidate all five FTAs under a regional chapeau. The Philippines has one purely bilateral FTA, the Economic Partnership Agreement it concluded in 2004 with Japan – who has been the Philippines' top trading partner for many years. In the past couple of years, the Philippines has started to develop its trade agenda further and has reached out to EFTA (sixth round of negotiations in April 2016), the EU and some individual APEC members on the negotiation of additional bilateral FTAs, and has expressed an interest in joining the Trans-Pacific Partnership (TPP) once it is open to new members.

The FTA the EU is negotiating with the Philippines will develop a key aspect of our overall relationship with the Philippines that is based on the Partnership and Cooperation Agreement (PCA) signed in 2012. The agreement shall facilitate increasing bilateral trade flows between the EU and the Philippines and an expansion of foreign direct investment.

The Philippines is the EU's sixth largest trade partner in ASEAN and ranks 42<sup>nd</sup> worldwide, while the EU is the Philippines fourth largest trading partner. In 2015, the EU exported goods worth €6.2 billion to the Philippines, while the EU imports from the Philippines amounted to €6.8 billion. Data for 2015 reflects a substantive increase in Philippine exports to the EU that can partly be explained by the Philippines becoming a GSP+ beneficiary in December 2014 (from earlier GSP status).

DG Trade has prepared two questionnaires to give stakeholders and interested parties the opportunity to provide information on trade matters in the agreement between the EU and the Philippines (FTA): one general for Industry and one specific on fisheries issues.

*The general questionnaire is divided into the following sections:*

- I. Trade in Goods
- II. Trade in Services and Investment
- III. Regulatory Issues (Intellectual Property Rights, Competition, Government Procurement)
- IV. Sustainable Development
- V. Other issues

In addition, where possible, we would appreciate receiving as specific information as possible (substantiated where possible by economic indicators and/or data) of respondents' interests, prioritization within sectors, and any proposals for solution, where problems have been identified.

The present questionnaires aim at providing the European Commission with information to establish priorities and to take decisions throughout the negotiating process and include detailed questions in order to capture all possible issues related to the EU's trade interests in the Philippines. Your reply to this questionnaire is important in this process and we thank you in advance for your contribution.

The Commission, subject to the application of the EU's rules on access to documents (Regulation No 1049/2001), will treat the information that you provide as confidential. EU rules on access to documents allow the Commission to withhold access to a document where disclosure would undermine the commercial interests of a natural or legal person or harm the EU's relations with third countries, unless there is an overriding public interest in disclosure.

The Commission would welcome your input and comments on this questionnaire by **30<sup>th</sup> April 2016**. Please send your replies to the following e-mail address: [trade-industry@ec.europa.eu](mailto:trade-industry@ec.europa.eu)

# QUESTIONNAIRE ON A FREE TRADE AGREEMENT WITH THE PHILIPPINES

## FISH AND FISHERY PRODUCTS

### **Introduction**

On 22 December 2015 the European Commission announced the launch of Free Trade Agreement (FTA) negotiations with the Philippines. Bilateral negotiations with the Philippines are the fifth to be launched with a member of the Association of Southeast Asian Nations (ASEAN) –following the launch of negotiations with Singapore (2010), Malaysia (2010), Vietnam (2012) and Thailand (2013).

The aim is to conclude an FTA that covers a broad range of issues, including tariffs, non-tariff barriers to trade, trade in services and investment, as well as trade aspects of issues such as intellectual property rights, public procurement, competition and sustainable development.

The following questionnaire has been prepared for the European Commission to gather information from the European fisheries sector to help the Commission establish priorities and take decisions throughout the negotiating process.

The Commission, subject to the application of the EU's rules on access to documents (Regulation 1049/2001 of 30 May 2001, OJ L 145 of 31/05/2001 p.43.), will treat the information that you provide as confidential. EU rules on access to documents allow the Commission to withhold access to a document where disclosure would undermine the commercial interests of a natural or legal person or harm the EU's relations with third countries, unless there is an overriding public interest in disclosure. Please indicate clearly in your reply if this is the case.

Please answer each question that is relevant to your interests.

In addition, where possible, please indicate the extent of your interest (high, medium, low), the level of priority within sectors and suggestions for solutions if you identify a specific problem.

The questionnaire will be included on **Directorate-General Trade's web page** for consultations of civil society (<http://trade.ec.europa.eu/consultations/index.cfm>). You are invited to reply to the questionnaire by **30<sup>th</sup> April 2016**.

Please send you reply to the following email address: [TRADE-D3-REQUEST-BOX@ec.europa.eu](mailto:TRADE-D3-REQUEST-BOX@ec.europa.eu) and [MARE-B2@ec.europa.eu](mailto:MARE-B2@ec.europa.eu)

## **Background information**

The Philippines is one of the 10 members of the ASEAN and, with a GDP of €260 billion in 2014, the fifth largest economy in the region. The Philippine economy has more than doubled its size in the last decade and consolidated itself as one of the fastest growing economies in Southeast Asia (6.1% GDP growth in 2014). With a population of 100 million it is also the second most populated country in ASEAN.

The Philippines continues to work with the rest of the ASEAN Member States in deepening economic integration in the region under the ASEAN Economic Community –that was formally established on 31 December 2015. As part of ASEAN, the Philippines has concluded five regional FTAs (China, India, South Korea, Japan, and Australia and New Zealand) and is engaged in the negotiation of the Regional Comprehensive Economic Partnership (RCEP) that aims to consolidate all five FTAs under a regional chapeau. The Philippines has one purely bilateral FTA, the Economic Partnership Agreement it concluded in 2004 with Japan – who has been the Philippines top trading partner for many years. In the past couple of years, the Philippines has started to develop its trade agenda further and has reached out to EFTA (sixth round of negotiations in April 2016), the EU and some individual APEC members on the negotiation of additional bilateral FTAs, and has expressed an interest in joining the Trans-Pacific Partnership (TPP) once it is open to new members.

The FTA the EU is negotiating with the Philippines will develop a key aspect of our overall relationship with the Philippines that is based on the Partnership and Cooperation Agreement (PCA) signed in 2012. The agreement shall facilitate increasing bilateral trade flows between the EU and the Philippines and an expansion of foreign direct investment.

The Philippines is the EU's sixth largest trade partner in ASEAN and ranks 42<sup>nd</sup> worldwide, while the EU is the Philippines fourth largest trading partner. In 2015, the EU exported goods worth €6.2 billion to the Philippines, while the EU imports from the Philippines amounted to €6.8 billion.

## **The fisheries sector in the Philippines**

The fisheries sector plays an important socio-economic role in the Philippines, accounting for roughly 1.6% of GDP (gross value-added of \$4.4 billion in 2014) and giving direct employment to more than 1.6 million people. According to FAO, in 2013 the Philippines was the 9<sup>th</sup> largest fish producing country in the world with a total production of 4.7 Mt.

However, the Philippines is a relatively modest fisheries exporter, with fishery exports totalling \$1.3 billion in 2014. Tuna is the main fishery export (\$443 million), followed by seaweed (\$219 million) and shrimp/prawn (\$120 million). Philippine top five export markets are the US (25%), Japan (15%), Hong Kong (7%), China (6%), and Germany (6%).

## **EU trade in fisheries with the Philippines**

In 2014, the EU imported €154 million in fishery products from the Philippines (while EU fishery exports to the Philippines totalled €9 million), which represented less than 2.7% of total imports from the country. This made the Philippines EU's 27<sup>th</sup> source of fishery imports worldwide, accounting for under 1% of total fishery imports into the EU.

Tuna products represent in terms of value more than 90% of EU fishery imports from the Philippines (with €110 million, the Philippines ranked in 2014 as the 7<sup>th</sup> foreign supplier of canned tuna to the EU). Other imports include molluscs, prepared or preserved fish (sardines, anchovies and mackerel), fresh and frozen fish and crustaceans (shrimps and prawns).

Preliminary data for 2015 anticipates an increase in Philippine exports to the EU that can partly be explained by the Philippines becoming a GSP+ beneficiary in December 2014 (from earlier GSP status). From January to October 2015, the EU imported €163 million worth of fishery products from the Philippines, which represents a 13% increase from the same period the year before (against an overall increase of imports from the Philippines of 19.4%).

## TRADE IN FISH AND FISHERY PRODUCTS

(Please note that the following questions also apply to aquaculture products and/or the aquaculture industry, where appropriate)

### 1) General

- a) Please indicate your area of business (ship-owner, fisherman, importer, exporter, processor, etc.).
- b) What is your interest or potential interest in trade in the fisheries sector between the Philippines and the EU?
- c) How do you assess the Philippines' export potential for fish and fishery products?
- d) Please specify your overall **offensive** interest, i.e. what kind of fish and fishery products would you like to export to the Philippines<sup>1</sup>?
- e) What is your **defensive** interest, i.e. what kind of fish and fishery products are sensitive for EU stakeholders<sup>1</sup> in our trade relations with the Philippines?
- f) Have you encountered any non-tariff barriers, such as sanitary requirements, to the export of fish and fishery products to the Philippines? If so, please specify.
- g) Please indicate the priorities (ranked) for your business sector in the Philippines, specifying the criteria you apply to determining priorities (e.g. import duties as well as non-tariff barriers and measures, trade volume to the Philippines, trade volume to comparable countries within and outside ASEAN, economic cost of a barrier).
- h) Do you have a commercial presence in the fisheries sector in the Philippines? Would you be interested in establishing a commercial presence in the fisheries sector in the Philippines? Have you experienced any barriers in establishing a commercial presence in the fisheries in the past? If so, please specify.

### 2) Questions related to tariffs

- a) Please describe your interests with respect to tariff dismantling in the Philippines:
  1. Priorities per tariff line for frontloading (i.e. early tariff elimination);
  2. Backloading (tariff elimination over a transitional period); and
  3. Links with other trade areas (e.g. rules of origin; safeguards; removal of non-tariff barriers).
- b) When exporting to the Philippines do you have problems of tariff classification [product classification for the purpose of application of tariffs]? If so, please specify.

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<sup>1</sup> If possible, please indicate the tariff line of the Combined Nomenclature (Official Journal of the European Union, L 304, 31 October 2012, available at: <http://eur-lex.europa.eu>)

- c) Following GSP+ where the Philippines has been granted 0% preferential tariffs for most fisheries export products – would you have an interest in a continuation of these tariffs? and if so, for which products?

### **3) Questions related to rules of origin**

- a) Are you aware of the significance of rules of origin in trade in fish and fishery products? Which preferential rules of origin would you like to see applied for fish and fishery products in a trade agreement with the Philippines?

### **4) Questions related to sustainable fisheries**

- a) Do you have specific practices in place to promote sustainability (e.g. concerning working conditions and environmental protection) throughout the supply chain?
- b) Do you think an FTA with the Philippines could contribute to the promotion of sustainable fisheries?
- c) Would you like to flag any specific issues regarding sustainable management of fisheries in relation with the Philippines (e.g. participation in Regional Fisheries Management Organizations, fisheries international agreements, fight against IUU, global fisheries governance, etc.)? Please indicate your area(s) of interest and the reasons.

### **5) Trade facilitation (import, export, transit procedures and internal market in the Philippines)**

Please respond to the following with **yes/no** and, where possible, provide details

- a) Have you experienced general problems with import, export, transit procedures and requirements in the Philippines including when landing fish products in Philippines ports?
- b) Have you experienced problems when marketing fish products inside the Philippines (e.g. across Provinces)?
- c) Have you experienced specific problems related to:
- transparency/publication of and access to trade regulations
  - documentary requirements
  - data requirements
  - fees and charges
  - inspections and controls during clearance
  - other customs procedures
  - discriminatory treatment
  - lack of uniformity in application of procedures
  - customs valuation
  - coordination between different border agencies or between Provincial authorities
  - use or non-use of information technology
  - application or non-application of relevant international standards

- procedures for legal recourse/appeal

**6) Questions related to investment in the fisheries sector**

- Do you have an interest in investment in the fisheries sector in the Philippines? If so, please specify.
- Please give your assessment of the situation for EU operators or investors in relation to investment in the fisheries sector in the Philippines. Please specify whether you have encountered difficulties in relation with:
  - formal restrictions on foreign equity or foreign ownership limitations;
  - limitations as regards access to fishing licenses;
  - limitations on the movement of personnel;
  - residency requirements for members of boards/senior management;
  - non-transparent ownership and control conditions;
  - Philippine competition legislation as it relates to investment.

**7) Questions related to services**

- Do you have you an interest in services in the fisheries sector in the Philippines? If so, please specify.
- Have you experienced any difficulties in accessing and/or providing services in the Philippines? What kind of difficulties and how do you think the agreement with the Philippines should address these?

**8) Other issues**

Are there any other issues that are not mentioned in this questionnaire that you would like to address?

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## QUESTIONNAIRE ON A 'FREE TRADE AGREEMENT' WITH THE PHILIPPINES

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### *Background*

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The EU exports to the Philippines mostly transport equipment (31%), machinery (15%), food products (13%), chemicals (11.5%), and electronic components (11%). Philippines' main exports to the EU are office and telecommunication equipment (45%), machinery (15%), food products (12.5%), and optical and photographic instruments (11%).

Trade in services between the EU and the Philippines was worth €3.3 billion in 2014, with a surplus for the Philippines of €0.4 billion. In addition, European businesses have invested heavily in the Philippines during the last decade, building up an FDI stock in the Philippines of €6.7 billion (2014) that makes the EU the largest investor in the Philippines, well ahead of the US and Japan.

### *Information on the questionnaire*

The questionnaire is divided into the following sections:

- I. Trade in Goods
- II. Trade in Services and Investment
- III. Regulatory Issues (Transparency, Intellectual Property Rights, Competition, Government Procurement)
- IV. Other issues

Should there be any additional point you wish to draw the Commission's attention to, please describe this under chapter "IV. Other issues".

In addition, where possible, we would appreciate receiving as specific information as possible (substantiated where possible by economic indicators and/or data) of respondents' interests, prioritization within sectors, and any proposals for solution, where problems have been identified.

The questionnaire has been prepared in order to provide the Commission with information to assist it in establishing priorities and taking decisions throughout the negotiating process. Your reply to this questionnaire is important in this process and we thank you in advance for your contribution.

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Please send your replies by 30<sup>th</sup> April 2016 to the following e-mail address: [trade-industry@ec.europa.eu](mailto:trade-industry@ec.europa.eu)

## **I. TRADE IN GOODS**

The Trade in Goods section of this questionnaire is divided into the following sections:

- A. General goods-related questions
- B. Questions related to rules of origin
- C. Questions related to import restrictions and prohibitions
- D. Questions related to access to raw materials and export restrictions and prohibitions
- E. Questions related to import and export procedures (included under a general heading "customs procedures")
- F. Questions related to discrimination and transparency in domestic regulation and taxation
- G. Questions on trade defence instruments (anti-dumping, anti-subsidy and safeguards)
- H. Questions related to Technical Barriers to Trade (TBT) (industrial goods)
- I. Questions related to Sanitary and Phytosanitary Measures (SPS) (agricultural goods, fish and fishery products)

### **A. General goods related questions**

1. What are the existing trade flows in your sector(s)?

2. What is your assessment of the potential for growth in this sector(s)? and the specificities of your sector in the Philippines that may have a relevance for the FTA?
3. Could you specify your overall “offensive” and “defensive” interests?  
*(Note: “Offensive interest” is understood to mean the interest you may have in gaining access to the Philippine market. “Defensive interest” is understood to mean competition from Philippine firms in your domestic market.)*
4. In your sector, do you see either:
  - a) an interest in EU companies supplying goods to the Philippines (i.e., an export interest)?
  - b) an interest in importing?
  - c) an interest in EU companies setting up production facilities in the Philippines?
  - d) an interest in using the PH as a basis for trading / business within ASEAN?

How strongly (for example, in financial terms) would you rate the level of these interests?
5. Do you have an interest in exporting or importing "green goods" (i.e. goods considered to be environmentally and climate change friendly)?
6. Is there any element in an FTA between the Philippines (or ASEAN) and a third country that harms your competitive position?
7. How would you assess for your sector the relative importance of the Philippines (in terms of production capacity, comparative advantage, potential, etc.) among the countries of the Southeast Asian region?

**B. Questions related to rules of origin**

8. What preferential rules of origin should apply in the sector(s) of your interest in the agreement with the Philippines? Can your sector(s) apply the new rules based on the reform of the GSP rules of origin applicable since 2010? If relevant, please indicate the maximum level of non-originating materials that you would wish to apply to your products.
9. Would your industry need specific flexibility to source abroad, including from other ASEAN Member States? If yes, from which ASEAN Member State? Could your industry indicate sensitivities as regards possible cumulation by the Philippines of materials or products from other ASEAN Member States or from other EU FTA partners?

**C. Questions related to duties, import restrictions and prohibitions**

10. Does your sector face import restrictions or prohibitions in the Philippines? If so, please specify the type of import restrictions (import duty, combined with additional or specific duties, tariff rate quota, import licensing, import prohibition, etc.)? Please specify the likely effect of their elimination.
11. If your product is subject to import licensing requirements, are such licenses granted automatically to all applicants?
12. What other measures are you faced with when importing in the Philippines?

13. Are all measures related to import restrictions or prohibitions publicly available?
14. What depth of tariff cuts and on which goods would be necessary for these to make an economic difference to your sector?

**D. Questions related to access to raw materials and export restrictions and prohibitions**

15. Does your sector have an interest in purchasing raw materials from the Philippines? If so, please specify what raw material and describe its economic relevance. Are there any measures that could be included in an agreement to facilitate trade or reduce costs for trade in raw materials?
16. Does your sector face export restrictions or investment restrictions with respect to the Philippines? If so, please specify the type of export restrictions (export duty, tariff rate quota, VAT rebate schemes, licensing, discriminatory promotion schemes, etc.). Please specify the likely effect of their elimination.
17. Are you aware of dual pricing of raw materials (i.e. where raw materials are priced at a lower level on the domestic market compared to international market prices to the benefit of local production)?
18. On top of legally binding provisions in an eventual EU-Philippines agreement, does your sector favour closer cooperation in the field of raw materials with the Philippines? If so, in which form (e.g. regular dialogue)? What could be the topics discussed in the framework of such a cooperation (e.g. rules, points of concern, alliance building with raw material producers and potential users)?
19. Does your sector have an interest in investing into the raw materials sector in the Philippines? Which are the specific issues which should be tackled to facilitate this? Please explain.

**E. Customs Procedures (import, export and transit procedures)**

20. Do you face problems regarding one or several of the following issues? Please respond with yes/no and where possible provide a more detailed description of the problems faced.

a) Overall problems with procedures and requirements for imports, exports and/or transit in the Philippines?

b) Do you encounter specific problems related to:

- |   |        |
|---|--------|
| - inspections and controls during clearance                     | YES/NO |
| - pre-shipment inspections                                      | YES/NO |
| - release times   | YES/NO |
| - fees and charges  | YES/NO |
| - confidentiality of data                                       | YES/NO |
| - data requirements   | YES/NO |
| - documentation requirements                                    | YES/NO |
| - compulsory use of customs brokers                             | YES/NO |
| - other customs procedures                                      | YES/NO |
| - transparency / publication of and access to trade regulations | YES/NO |

- discriminatory treatment	YES/NO
- lack of uniformity in application of procedures	YES/NO
- complexity in application of procedures	YES/NO
- customs valuation	YES/NO
- tariff classification	YES/NO
- relations with/access to the customs authorities	YES/NO
- co-ordination between different border agencies	YES/NO
- use or non-use of information technology	YES/NO
- application or non-application of relevant international standards	YES/NO
- procedures for legal recourse/appeal	YES/NO
- transshipment	YES/NO
- reference pricing	YES/NO
- logistics/congestion	YES/NO
- other (please specify)	YES/NO

c) In light of your sourcing / delivery patterns, do you have any other comments to make?

21. Do you face any problems with the way in which customs procedures are implemented by the customs authorities?

**F. Questions related to discrimination and transparency in domestic regulation and taxation**

22. Is your sector faced with discriminatory measures and practices between domestically produced goods and imported goods into the Philippines? If so, describe the nature of this discrimination (e.g. is it based on legislation or on de facto discrimination; does it concern a regular domestic regulation and/or taxation regime?). Can you provide written substantiation of discrimination (including reference to legislation)?

23. Do you encounter problems due to lack of transparency of Philippine regulation, e.g. in the form of lack of publication of legislation or other documents? (Please also refer to the detailed questions under section III.A below regarding transparency).

**G. Questions on trade defence instruments (anti-dumping, anti-subsidy and safeguards)**

24. Have you had experience related to the use of trade defence instruments in the Philippines (anti-dumping, anti-subsidy or safeguards)?

25. Were there particular difficulties in communicating with and/or receiving information from the Philippines authorities dealing with trade defence instruments?

26. Have you encountered market distortions (subsidies, pricing policies) in the Philippines which should be addressed by e.g. trade defence measures or other types of measures or which create structural trade difficulties?

**H. Technical Barriers to Trade**

*In the context of this questionnaire, the term "Technical Barriers to Trade (TBT)" is intended to mean requirements applicable to products (e.g. technical regulations) and the*

*conformity assessment procedures intended to verify compliance with these requirements (e.g. testing, inspection and certification, product registration or licensing, etc.).*

*Please provide comments on the following issues. Comments are particularly welcome if you or your colleagues in the industry consider that some of the below areas should take priority in the TBT discussions.*

27. Have you found product requirements to be a problem in exporting your products to the Philippines?
28. Often, trade barriers arise not necessarily from the product requirements as such, but from the procedures used to verify compliance with these requirements (conformity assessment procedures). What are the procedures used by the Philippines to verify compliance of products in your sector? Are they more burdensome than those applied in the EU?<sup>1</sup> Do Philippine authorities accept product specific test results from accredited EU conformity assessment bodies? Are there any specific requirements in terms of accreditation? Are time-periods set for certification? Do you encounter difficulties (e.g. increased costs and marketing delays) due to these conformity assessment procedures?
29. What is your assessment of the Philippines' transparency and good regulatory practice in the development, adoption and enforcement of technical regulations? Please focus in particular on the questions below, and provide as detailed answers as possible.
  - a) How do Philippine authorities consult industry on proposed technical regulations or conformity assessment procedures? For instance, does the Philippines systematically conduct public consultations on proposed TBT measures? How is transparency and participation of stakeholders ensured with respect to standards used in support of technical regulations or conformity assessment procedures?
  - b) If not, do importers (or domestic industry in the Philippines) have other opportunities to submit comments during the drafting of new technical regulations or conformity assessment procedures, before the proposal is adopted?
  - c) Are similar consultation opportunities being provided to both domestic and foreign industry?
  - d) In your experience, have comments made by stakeholders been taken into account?
  - e) Is industry involved in standardization work in the Philippines? In particular, are foreign and/or foreign-invested companies allowed to participate in standard-setting activities in your sector (e.g. membership in technical committees developing new Philippine standards)? If yes, what is your experience with regard to this area.
  - f) Have you ever tried to obtain information about proposed or adopted technical regulations, conformity assessment procedures or standards from the Philippine TBT Notification and Enquiry Point (<http://www.bps.dti.gov.ph>)? Have you encountered specific difficulties?

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<sup>1</sup> For instance, EU legislation may allow for a manufacturer's declaration of conformity without the mandatory intervention of a third party certification body, whereas Philippine legislation may require that the product be certified by a public authority or a certification body approved by this authority.

30. To what extent have you encountered difficulties due to short implementation periods for new measures?
31. Have you experienced problems or difficulties arising from the division of responsibility for TBT-related measures between Philippine authorities, or from regulatory differences between different regions of the Philippines?
32. Do any or all of the following issues pose particular problems with regard to exporting your products to the Philippines?
  - (i) short implementation periods for new measures;
  - (ii) availability of technical regulations, conformity assessment procedures and related applicable standards (e.g. official Journal, public website etc.)
33. Does the Philippines use relevant international standards as a basis for its technical regulations, conformity assessment procedures and national standards in your sector? If so, are there any unnecessary deviations from, or additions to those international standards, that could create barriers to trade?
34. Do you encounter any barriers to trade arising from burdensome or discriminatory labelling or marking requirements? If so, please describe them in as much detail as possible.
35. With your knowledge of the technical regulations, standards and conformity assessment systems both in the EU and the Philippines, do you have any recommendations for solutions which would facilitate trade?
36. Would your proposed solutions be achievable within the provisions of regulatory systems currently applied in the EU and the Philippines, or would changes to those systems or legislative framework be necessary?
37. Do you see the recognition of EU standards as an important element of the FTA? What is the importance of standards to your sector? What standards are you using?
38. Have you encountered in the Philippines any specific barriers for small and medium size enterprises (SMEs) in your sector? If so, please describe briefly.
39. Are you aware of any user-friendly information on trade opportunities for SMEs provided by the Philippines?

**I. Sanitary and Phytosanitary Measures (Agricultural products, fish and fishery products)**

*Sanitary and Phytosanitary Measures apply in order to protect human, animal, and plant health.*

*Your answers to specific product questions (40) to (46) will be taken as an indication of interest that might change over time.*

40. List the agricultural products (these include animals and animal products, plants and plant products) and fishery products you are currently exporting to the Philippines / importing from the Philippines.

41. List the agricultural and fishery products that you may be potentially interested to export / import in future to the Philippines (regardless of whether exports are currently taking place or have taken place in the past).
42. Please specify the major Sanitary and Phytosanitary (SPS) barriers you have encountered in the past (or may potentially encounter) when trying to export agricultural and fishery products into the Philippines.
43. With your knowledge of the technical regulations, standards and conformity assessment systems both in the EU and the Philippines do you have any recommendations for solutions which would facilitate trade?
44. Would your proposed solutions be achievable within the provisions of regulatory systems currently applied in the EU and the Philippines, or would changes to the systems or legislative framework be necessary?
45. Do you expect that an SPS chapter in the proposed future agreement will benefit your industry? If so, please clarify.
46. On the basis of your previous response, which basic elements/provisions should an SPS chapter with the Philippines contain in order to potentially fulfil your priorities?
  - i. Transparency (better notification provisions on SPS import rules including predictability and stability of SPS rules)
  - ii. Regionalisation for animal and plant diseases
  - iii. Equivalence (system of recognition)
  - iv. Pre-listing of exporting establishments
  - v. Certification procedures
  - vi. Verification procedures
  - vii. Information exchange
  - viii. Notification and consultation
  - ix. Safeguard measures
  - x. Labelling
  - xi. Single (EU) accreditation process for meat and other agricultural products
  - xii. Other

## **II. TRADE IN SERVICES AND INVESTMENT**

47. What are the main barriers that your sector encounters in cross-border services trade with the Philippines (e.g. obligation to have a local commercial presence such as an office, branch or subsidiary in order to conduct business, etc.)?

48. What are the main barriers that your sector encounters in establishing a commercial presence, including by acquisition, in the primary, secondary or tertiary sector in the Philippines (e.g. capital ownership / equity cap, limitations to management control, difficulty in obtaining a licence or authorisation, treatment by state-owned enterprises, complex and lengthy procedure between federal and provincial level, etc.)? How do you assess the obligation to work in joint venture with Filipino nationals, or the limitation on the ownership of land? Should this be a focus of our negotiations or are there ways for business to accommodate this and negotiations should give priority to other elements? Any details would be appreciated.
49. What are the main barriers that your sector encounters with regard to the temporary movement of natural persons for business purposes in the primary, secondary or tertiary sector in the Philippines (e.g. difficulty in obtaining work permits and visas due to lengthy procedures, recognitions of your employees' qualifications, lack of transparency in regulations at various administrative levels, etc.)? Are there any occupations and professions in the Philippines that are not allowed to be exercised by foreigners, and that you would wish to see opened as a result of the FTA? What should be the professions to look at with priority? Are there any industry-specific legislation, regulations or administrative acts which contain criteria on nationality of director, managing partner or manager?
50. Do you observe any self-imposed constraints (i.e. voluntary codes of conduct that are agreed and followed by operators) relating to environmental and social aspects of sustainable development, in the context of investment or services trade, which it would be to your advantage to see generalised or codified in the Philippines? And if so, which?
51. Do you encounter problems due to lack of transparency (e.g. lack of publication of legislation or other documents relevant for your trade behaviour)? Please also refer to the detailed questions under section III.A) below regarding transparency. Is there an interest in having a Mutual Recognition Agreement in your sector (to cover recognition of standards, licenses, qualifications or else)?
52. Is market access allowed in your sector in the Philippines which goes beyond its relevant access obligations in the WTO and if yes, is it still interesting for your business to "lock-in" this market access by means of legally binding commitments at the level of the current situation or would it be necessary to obtain even further formal market access commitments?
53. In the sector in which your business specialises, do you have a particular interest in entering the Philippine market?
54. What are the areas/sectors in which European companies are at a disadvantage vis-à-vis third countries' competitors, due to bilateral trade treaties or FTA agreements to which the Philippines is a Party and that are already in force or about to come into force (e.g. JPEPA, ASEAN-China, ASEAN-South Korea, ASEAN-Australia and New Zealand, future EFTA-Philippines FTA)?
55. In the light of question 54, what negotiating objectives should the EU focus on, in the various sectors, so as to achieve at least a level playing field for its service providers and investors in the Philippines?

56. Are foreign investments in the Philippines treated in a fair and equitable manner? Have there been any unreasonable, arbitrary or discriminatory measures against foreign investments?

In the course of doing business in the Philippines, have you ever encountered any requirements or incentives to:

- a) export a given level or percentage of goods or services; or
- b) achieve a given level or percentage of domestic content; or
- c) purchase, use or accord a preference to goods produced or services provided in the Philippines, or to purchase goods from Filipino producers or services provided by Filipino service suppliers; or
- d) transfer a particular technology, a production process or other proprietary knowledge; or
- e) grant access to proprietary source code; or
- f) to locate the headquarters of that investor for a specific region or the world market in its territory; or
- g) to achieve a given level or value of research and development in its territory?

57. Have there been any cases of direct or indirect expropriation? If so, have expropriated investments been compensated promptly, adequately and effectively?

58. Are provisions on free transfer of funds of capital and payments related to an investment by investors fully respected?

59. Have there been any restrictions on payments due to exceptional circumstances such as pressures on the balance of payments or exchange rate policy?

60. Are there any known cases where foreign investors have been subjected to physical coercion as a result of the application of the Philippines' criminal law to regular business activity?

61. Have there been any cases where foreign investors encountered difficulties in enforcing their rights established under domestic legislation or judgements issued in their favour by domestic courts?

62. Have you experience with incentives schemes that were promised but not materialised, notably in terms of tax-reductions, cuts and reimbursements?

### **III. REGULATORY ISSUES**

#### **A. Transparency**

*To the extent applicable, indicate what problems arise due to lack of transparency such as lack of publication of legislation or other relevant documents. In the questions below, administration/government should also be understood as local authorities, for instance regulatory bodies, regulatory authorities, certification offices, licencing authorities.*

63. Is information on trade-related regulations and their administration published and readily available, including on laws and regulations, procedures, penalties, appeal procedures, administrative guidelines and practice, decisions, and agreements with the Philippines where relevant?
64. Is information made available in a readily accessible way, including through websites?
65. Are there enquiry points available and accessible to interested parties (including through websites) which help making information on trade-related regulations and their administration available?
66. Other requirements, suggestions concerning the availability of information?
67. Are the intervals between publication and entry into force sufficient to allow interested parties to become acquainted with and prepared for complying with them?
68. Are appropriate opportunities offered for prior consultation and commenting on new and amended rules (including sufficient minimum delays for comment)?
69. Are there any areas or sectors where consultation could be improved?
70. What is your assessment more generally of the Philippines' transparency and regulatory practices in the development and adoption of trade-related rules and regulations?
71. Are advance rulings available from the administration (such as for trade in goods on customs classification and origin)?
72. Are there adequate complaints possibilities and appeal procedures (in terms of non-discrimination, transparency, possibility for representation by independent legal counsel, cost and timelines set by different authorities, including Customs)?
73. Do you have any other comments on the administration of trade-related regulations, including on the use of discretion, system of penalties, coordination and control mechanisms?
74. Please specify any shortcomings identified. Where available, identify best practices (such as existing information and transparency mechanisms in the Philippines) that could serve as a reference or starting point.
75. Are there specific channels of information for SMEs (including through dedicated websites) in the Philippines?

**B. Intellectual Property Rights**

76. Are you satisfied with the current conditions of protection and enforcement of intellectual property rights (IPR) in the Philippines? Please explain briefly nature/scope of the problem, if any?
77. According to your experience, what are the main weaknesses / problems of the current system in place (if any)?
78. Is an adequate and effective protection and enforcement of IPR in the Philippines essential for the pursuit of your trading activities there?

79. Please indicate whether you consider intellectual property rights issues as priorities and specify which IPRs are the top priorities for you in the Philippines and why :
- i. Copyright and related rights
  - ii. Trademarks
  - iii. Geographical Indications (GIs)
  - iv. Designs
  - v. Patents
  - vi. Data protection
  - vii. Plant variety
  - viii. Enforcement
80. Please indicate one particular aspect of intellectual property protection or enforcement that you would wish to see addressed in the future EU-Philippines FTA.
81. Have you encountered problems in protecting/enforcing your IPRs in the Philippines? If yes, how did the protection/enforcement mechanisms function in the Philippines? Did you encounter difficulties in protecting/enforcing your rights as a foreigner in the Philippines?
82. Is there any type of enforcement measure missing in Philippine legislation and practices that you consider necessary in order to react against infringements of IP rights? Are penalties proportionate and provide sufficient deterrent against violations?
- C. Competition, State Aid/Subsidies and State-Owned Enterprises**
83. Have you encountered any anti-competitive practices in the Philippines (cartels, abuse of dominant position, vertical or horizontal restrictions of competition, anti-competitive mergers & acquisitions) that are harming your business? If so, describe briefly the nature of the practices and the problems encountered.
84. Does Philippine law provide for legal remedies concerning those anti-competitive behaviours? Have you brought these problems to the attention of the relevant competition authority? If so, what has been their response/follow-up and how have decisions been enforced?
85. Have you been subject to investigations for alleged competition infringements by Philippine competition authorities? If yes, how was this experience?
86. Have you been party to any merger review filings in the Philippines? If yes, how was this experience?
87. Are you aware of instances where state aid/subsidy granted by the Philippine authorities has had adverse effects on you?
88. Have Philippines state aid/subsidies put you or a company you know of at a competitive disadvantage? If so, please

- a) Indicate whether the aid made it more difficult for you to compete in the Philippines market, in the EU market and/or in export markets.
  - b) Describe to the extent possible the form of the state aids/subsidies involved (e.g. export rebates, tax/duty exemptions, below-market loans, state guarantees, grants), the objective (e.g. research and development aid, export aid, regional development aid), the sectors concerned, the granting authority (e.g. federal or provincial government, specific agency) and give an estimate of their amount.
  - c) Indicate if you have taken any steps to raise this matter, either in the Philippines or with the appropriate authorities in the EU? Have you had problems in getting information on the state aid/subsidy granted by the Philippine authorities?
89. Have you invested in the Philippines? Has the availability of state aids/subsidies played a role in your decision? If yes, please describe the form, amounts and objectives of the aid in question and specify the granting authority. Have you experienced discrimination in the access to state aid/subsidies from Philippines authorities (e.g. aid or higher amounts of aid reserved to local firms)?
90. Are you aware of the Philippine government granting special or exclusive rights or privileges, advantages or immunities to domestic enterprises that have an adverse effect on your business (e.g. discriminatory treatment, state aid/subsidies, access to markets, access to public procurement, access to financing, etc.)? If so, describe briefly the nature of these practices and the problems encountered.
91. Are you aware of any exemptions from the national law granted to Philippine state-owned enterprises or the existence of statutory laws or favourable regulatory or other measures applicable to state-owned enterprises? If yes, please provide a brief description.
92. Are you aware of any particular government measures that would induce or encourage Philippine state-owned companies to engage in anti-competitive behaviour? Please describe such measures.
93. Are you aware of any national policy objectives that the Philippine government is implementing through domestic state-owned enterprises and which have an adverse effect on your business? If yes, please describe briefly what such policy objectives are and how they affect your business.
94. How easy/difficult is it to get information about the activities of Philippine state-owned companies (through annual reports, published accounts, etc.)? If there are problems, how would you suggest improving the situation?

**D. Government procurement**

*Please respond with yes/no and where possible provide comments to expand on the replies to the following issues.*

95. Are you satisfied with the current conditions of access to Philippines government procurement markets?
96. What are the main reasons you are not participating in the public procurement market in the Philippines?

97. Which public procurement markets (geographically/sectorally) would you have an interest in participating in the near future?
98. Are you aware of existing legislation on government procurement in the Philippines? What is your experience with its practical application?
99. Are there any areas in which you feel EU suppliers face restrictions or different treatments that do not apply to Philippine suppliers? Please indicate the key regulatory and market access obstacles met by EU suppliers when tendering for public contracts. Please specify the extent to which these obstacles prevent EU suppliers from doing business in the Philippines.
100. Please indicate whether you consider the following possible elements of a government procurement chapter as a priority concerning procedural rules and national treatment :
- i. Transparency in the tendering process
  - ii. Easy access to the qualification system
  - iii. Use of international rather than local technical standards
  - iv. Effective review mechanisms including the possibility to obtain interim measures
  - v. A single point of entry giving an overview of, and access to, all relevant procurement opportunities in a given jurisdiction
  - vi. National and MFN treatment
101. Please indicate which key sectors, types of contract (public contracts, concessions, and other forms of Public Private Partnership) and procuring entities are priorities for EU suppliers. As regard services, mention precisely the category of services as well as the mode of supply (cross-border supply / consumption abroad / commercial presence/ presence of third country natural persons) in which EU providers are interested.
102. Please indicate the key regulatory and market access obstacles faced by EU suppliers when tendering for public contracts. Please specify the extent to which these obstacles prevent EU suppliers from doing business in the Philippines.

#### **IV. OTHER ISSUES**

103. Are you aware of the ASEAN Economic Community (AEC) integration process? If yes, do you perceive progress in the AEC is easing doing business in your sector across the region? How do you see EU bilateral FTAs with ASEAN Member States in relation to the ongoing ASEAN economic integration process?
104. Are there any other issues related to the topics covered by the above sections or to any other topics that are not mentioned in this questionnaire and that you would like to address?