

TRADE AND INVESTMENT

**Protocol to Agreement
Between the
UNITED STATES OF AMERICA
and the PHILIPPINES
of November 9, 1989**

Signed at Honolulu November 13, 2011



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

PHILIPPINES

Trade and Investment

*Protocol to agreement of November 9, 1989.
Signed at Honolulu November 13, 2011;
Entered into force November 13, 2011.*

**PROTOCOL TO THE 1989 TRADE AND INVESTMENT FRAMEWORK
AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF
AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES
CONCERNING CUSTOMS ADMINISTRATION AND TRADE FACILITATION**

The Government of the United States of America and the Government of the Republic of the Philippines (individually a "Party" and collectively the "Parties"), having entered into the Trade and Investment Framework Agreement between the United States of America and the Government of the Republic of the Philippines on November 9, 1989:

Seeking to expedite the movement, release, and clearance of goods in order to facilitate trade between the Parties; and

Desiring to improve cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues,

HAVE AGREED as follows:

Article 1: Publication

1. Each Party shall publish, including on the Internet, its customs laws, regulations, and general administrative procedures.
2. Each Party shall designate or maintain one or more inquiry points to address inquiries by interested persons concerning customs matters and shall make available on the Internet information concerning the procedures for making such inquiries.
3. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and shall provide interested persons the opportunity to comment before adopting them.

Article 2: Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties.
2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:
 - (a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws, and to the extent possible, within 48 hours of the goods' arrival;
 - (b) provide for customs information to be submitted and processed electronically before goods arrive in order for them to be released on their arrival;

(c) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities; and

(d) allow importers to withdraw goods from customs before and without prejudice to, the Party's customs authority's final determination of the applicable customs duties, taxes, and fees;¹

3. Each Party shall:

(a) ensure that the amount of any security is no greater than that required to ensure that obligations arising from the importation of goods under this Protocol will be fulfilled, and not in excess of the amount chargeable, based on tariff rates under domestic and international law, including this Protocol, and on valuation in accordance with the Customs Valuation Agreement;

(b) ensure that any security shall be discharged as soon as possible after its customs authorities are satisfied that the obligations arising from the importation of the goods have been fulfilled; and

(c) shall adopt procedures allowing:

(i) importers to provide security such as bank guarantees, bonds, or other non-cash financial instruments;

(ii) importers that regularly enter goods to provide security such as standing bank guarantees, continuous bonds or other non-cash financial instruments covering multiple entries; and

(iii) importers to provide security in any other forms specified by its customs authorities.

Article 3: Automation

Each Party shall use information technology that expedites procedures for release of goods and shall:

(a) endeavor to use international standards with respect to procedures for release of goods;

(b) make electronic systems accessible to customs users;

(c) provide for electronic submission and processing of information and data before

¹ A Party may require an importer to provide a sufficient guarantee in the form of a surety, a deposit, or other appropriate instrument covering the ultimate payment of the customs duties, taxes, fees in connection with the importation of the good.

arrival of the shipment to allow for the release of goods on arrival;

- (d) employ electronic or automated systems for risk analysis and targeting;
- (e) work towards developing compatible electronic systems between the Parties' customs authorities, to facilitate government to government exchange of international trade data; and
- (f) work towards developing a set of common data elements and processes in accordance with World Customs Organization (WCO) Data Model and related WCO recommendations and guidelines.

Article 4: Risk Management

Each Party shall adopt or maintain electronic or automated risk management systems for assessment and targeting that enable its customs authority to focus its inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods.

Article 5: Cooperation

1. With a view to facilitating the effective operation of this Protocol, each Party shall endeavor to provide the other Party with advance notice of any significant modification of administrative policy or other similar development related to its laws or regulations governing importations that is likely to substantially affect the operation of this Protocol.
2. The Parties shall cooperate in achieving compliance with their respective laws and regulations pertaining to:
 - (a) the implementation and operation of the provisions of this Protocol governing importations or exportations;
 - (b) the implementation and operation of the Customs Valuation Agreement;
 - (c) restrictions or prohibitions on imports or exports; and
 - (d) other customs matters as the Parties may agree.
3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, the Party may request that the other Party provide specific confidential information normally collected in connection with the importation of goods.
4. A Party's request under paragraph 3 shall be in writing, shall specify the purpose for which the information is sought, and shall identify the requested information with sufficient specificity for the other Party to locate and provide the information.

5. The Party from whom the information is requested shall, in accordance with its law and any relevant international agreements to which it is a party², provide a written response containing the information.

6. For purposes of paragraph 3, "a reasonable suspicion of unlawful activity" means a suspicion based on relevant factual information obtained from public or private sources comprising one or more of the following:

(a) historical evidence of non-compliance with laws or regulations governing importations by an importer or exporter;

(b) historical evidence of non-compliance with laws or regulations governing importations by a manufacturer, producer, or other person involved in the movement of goods from the territory of one Party to the territory of the other Party;

(c) historical evidence that some or all of the persons involved in the movement from the territory of one Party to the territory of the other Party of goods within a specific product sector have not complied with a Party's laws or regulations governing importations; or

(d) other information that the requesting Party and the Party from whom the information is requested agree is sufficient in the context of a particular request.

7. Each Party shall endeavor to provide the other Party with any other information that would assist that Party in determining whether imports from or exports to that Party are in compliance with the other Party's laws or regulations governing importations, in particular those related to unlawful activities, including of smuggling and similar infractions.

8. To facilitate trade between the Parties, each Party shall endeavor to provide, upon request, the other Party with technical advice and assistance for the purpose of improving risk management techniques, facilitating the implementation of international supply chain standards, simplifying and enhancing procedures for clearing goods through customs in a timely and efficient manner, advancing the technical skill of personnel, and enhancing use of technologies that can lead to improved compliance with a Party's laws or regulations governing importations.

² For greater certainty, nothing in this agreement affects the obligations of the Parties when requesting or providing mutual legal assistance in connection with the prevention, investigation and prosecution of criminal offenses and proceedings related to criminal matters, pursuant to any bilateral or multilateral agreement between the Parties.

Moreover, for greater certainty, this agreement does not prevent or restrict the exchange of information in criminal investigations, prosecutions and proceedings related to criminal matters pursuant to any other agreement, arrangement or practice which may be applicable between the law enforcement agencies of the Parties.

9. The Parties shall endeavor to cooperate in the enforcement of each Party's laws and regulations governing importations. The Parties shall further endeavor to establish and maintain channels of communication, including by establishing contact points that will facilitate the rapid and secure exchange of information and to improve coordination on importation issues.

Article 6: Confidentiality

1. Where a Party providing information to the other Party in accordance with this Protocol designates the information as confidential, the other Party shall keep the information confidential. The Party providing the information may require the other Party to furnish written assurance that the information will be held in confidence, will be used only for the purposes specified in the other Party's request for information, and will not be disclosed without the specific permission of the Party that provided the information or the person that provided the information to that Party.

2. If a Party receives information designated as confidential in accordance with paragraph 1, the Party receiving the information may nevertheless use or disclose the information for law enforcement purposes or in the course of judicial proceedings.

3. A Party may decline to provide information requested by the other Party where that Party has failed to act in conformity with paragraph 1.

4. Each Party shall adopt or maintain procedures for protecting from unauthorized disclosure confidential information submitted in accordance with the administration of the Party's customs laws, including information the disclosure of which could prejudice the competitive position of the person providing the information.

Article 7: Express Shipments

Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall:

- (a) provide a separate and expedited customs procedure for express shipments;
- (b) provide for information necessary to release an express shipment to be submitted and processed before the shipment arrives;
- (c) allow submission of a single manifest covering all goods contained in an express shipment, through, if possible, electronic means;
- (d) to the extent possible, provide for the release of certain goods with a minimum of documentation;
- (e) under normal circumstances, provide for express shipments to be cleared within three hours after submission of the necessary customs documents, provided the shipment has arrived;

- (f) apply without regard to an express shipment's weight or customs value; and
- (g) under normal circumstances, provide that no customs duties or taxes will be assessed on, nor will formal entry documents be required for express shipments valued at US\$200 or less.³

Article 8: Review and Appeal

Each Party shall ensure that with respect to its determinations on customs matters, importers in its territory have access to:

- (a) a level of administrative review independent of the employee or office that issued the determinations; and
- (b) judicial review of the determinations.

Article 9: Penalties

Each Party shall adopt or maintain measures that allow for the imposition of civil or administrative penalties and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing tariff classification, customs valuation, and country of origin.

Article 10: Advance Rulings

1. Each Party shall issue, prior to the importation of a good into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party⁴, with regard to:

- (a) tariff classification;
- (b) the application of customs valuation criteria for a particular case, in accordance with the Customs Valuation Agreement;
- (c) the application of duty drawback, deferral, or other relief from customs duties;
- (d) country of origin marking;
- (e) whether a good is subject to a quota or tariff-rate quota; and

³ Notwithstanding Article 7(g), a Party may require that express shipments be accompanied by an airway bill or other bill of lading. For greater certainty, a Party may assess customs duties or taxes, and may require formal entry documents, for restricted goods.

⁴ For greater certainty, an importer, exporter, or producer may submit a request for an advance ruling through a duly authorized representative.

(f) such other matters as the Parties may agree.

2. Each Party shall issue an advance ruling within 90 days after its customs authority receives a request, provided that the requester has submitted all information that the receiving Party requires, including, if the Party requests, a sample of the good for which the requester is seeking an advance ruling. In issuing an advance ruling, the Party shall take into account facts and circumstances the requester has provided. For greater certainty, a Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review. A Party that, pursuant to this paragraph, declines to issue an advance ruling shall promptly notify the requester in writing, setting forth the relevant facts and the basis for its decision to decline to issue the advance ruling.

3. Each Party shall provide that advance rulings shall take effect on the date they are issued or on another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.

4. The issuing Party may modify or revoke an advance ruling after the Party notifies the requester. The issuing Party may modify or revoke a ruling retroactively only if the ruling was based on inaccurate or false information.

5. Each Party shall ensure that requesters have access to administrative review of advance rulings.

6. Subject to any confidentiality requirements in its laws, each Party shall make its advance rulings publicly available, including on the Internet.

7. If a requester provides false information or omits relevant facts or circumstances relating to the advance ruling, or does not act in accordance with the ruling's terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, monetary penalties, or other sanctions.

Article 11: Application of Certain Provisions

The Government of the Republic of the Philippines may delay giving effect to Articles 7(g), 10(c), 10(d), and 10(e) for a period of no longer than three years, beginning on the date of entry into force of this Protocol.

Article 12: Entry into Force and Termination

1. This Protocol shall enter into force on signature.
2. This Protocol may be amended by written agreement of the Parties.
3. Either Party may withdraw from this Protocol by providing written notice of withdrawal to the other Party. The withdrawal shall take effect on a date agreed by the Parties or, if the

Parties cannot agree on a date, 180 days after the date on which notice of withdrawal is delivered.

Article 13: Definitions

For purposes of this Protocol:

customs authority means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

customs duty includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;
- (b) antidumping or countervailing duty that is applied pursuant to a Party's domestic law; or
- (c) fee or other charge in connection with importation commensurate with the cost of services rendered;

Customs Valuation Agreement means the *WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*;

days means calendar days;

existing means in effect on the date of entry into force of the Protocol;

measure includes any law, regulation, procedure, requirement, or practice;

person means a natural person or an enterprise;

territory means:

- (a) with respect to Philippines, the continental territory, the islands, the maritime areas and the air space above them, in which Philippines exercises sovereignty and jurisdiction or sovereign rights in accordance with its domestic law and international law;
- (b) with respect to the United States,
 - (i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

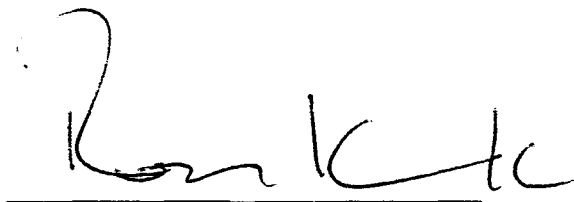
- (ii) the foreign trade zones located in the United States and Puerto Rico, and
- (iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

WTO means the World Trade Organization; and

WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done on April 15, 1994.

IN WITNESS WHEREOF, the undersigned have signed this Protocol.

DONE at Honolulu, in duplicate, this 13th day of November, 2011.



FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA



FOR THE GOVERNMENT OF THE
REPUBLIC OF THE PHILIPPINES