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## Implications of an RP-US FTA on the Philippine Financial Services Industry and the Philippine Economy

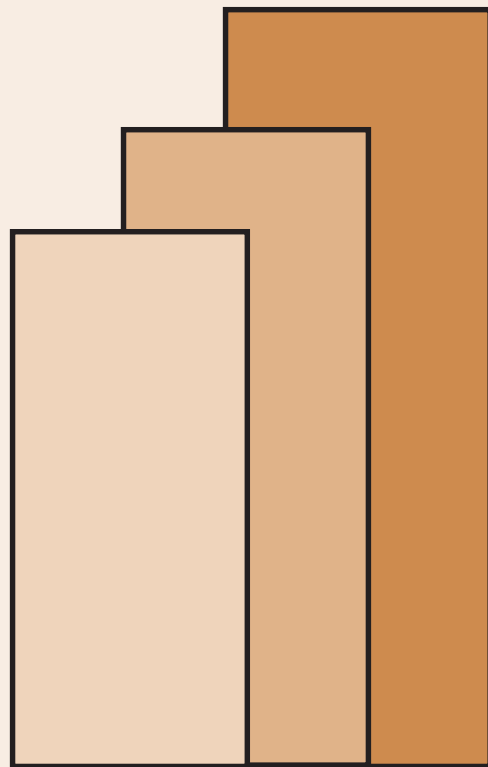
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**Implications of an RP-US FTA on the Philippine Financial Services Industry and the Philippine Economy**

**Dr. Leila Calderon-Kabigting  
Dr. Liberty S. Patiu**

**Abstract**

The paper discusses financial liberalization in the context of a proposed RP-US FTA. It discusses the state of the financial industry, in general, and also reviewed the US-Chile and US-Singapore FTAs to be able to arrive at the proposed provisions for the RP-US FTA. It also tackles the reforms that have to be undertaken in order to make the Philippine Financial Services Industry globally competitive and be more prepared to embrace the opportunities of an FTA with the US.

*Keywords: Financial Liberalization, Financial Services Sector, Market Access, Cross border Transactions, Foreign Ownership Limitations, International Capital Standards, E-commerce, Capital Markets, Harmonization of standards and practices, Corporate Governance*

## **Executive Summary**

### **Financial Liberalization**

The Philippines to remain competitive in the dynamic finance world has introduced reforms into its financial system. In the 80s and 90s, the Philippine financial system underwent reforms covering the banking industry, financial markets and insurance to promote a liberalized environment.

In the Philippines, government regulators introduced various policy reforms in the 1980s that provided a greater role for market forces, higher bank capitalization and better bank supervision. With the regulatory framework being continuously examined, there was already a relatively high degree of market orientation in the financial system that helped parry the effects of the Asian financial crisis.

In the 90s, we had the liberalization on foreign banks and insurance to further boost the financial services industry performance. Philippines has allowed only 10 foreign banks to join the banking industry .

A foreign insurance or reinsurance company or intermediary was allowed entry under one of the following modes: ownership of the voting stock of an existing domestic insurance or reinsurance incorporated in the Philippines; investment in new insurance or reinsurance company or intermediary incorporated in the Philippines; or establishment for a branch, but not for an intermediary. To qualify for entry, the companies had to belong to the top 200 foreign insurance or reinsurance or intermediaries in the world or among the top 10 in their country of origin, and had been in the business for at least 10 years. The regulatory framework governing the insurance industry was marked by conservatism and risk aversion. Although this resulted in overall financial soundness, it was also seen as overly cautious therefore constrained the growth and development of the sector.

In 2000, both the General Banking Law and Security Regulation Code were passed into law. Recently, the Electronic commerce act was also established. There is an on-going review of the respective charters of the Bangko Sentral ng Pilipinas (BSP) and of the Philippine Deposit Insurance Corporation (PDIC) to push for more reforms to strengthen our bank regulatory powers and improve legal protection of bank supervisors as well as to expedite problem bank resolution.

The BSP and SEC introduced capital market reforms/governance to ensure transparency in the market governing body. Three broad areas for reform: the legal and regulatory framework, market infrastructure and the quality of financial institutions

## **Implications of an RP- US FTA on Financial Services Industry and the Philippine Economy**

### **Key Informants**

In pursuing the free trade agreement between the Philippines and the United States, most of our key informants from the BAP, PSE, BSP, DOF, banking, insurance and stock market industry were in agreement that there are positive benefits from the FTA. One benefit is possible job opportunities here and in the US when the financial sector opens up. Another is the upgrading of technology and enhancing the skills of local personnel. However, some key informants oppose the idea of having an FTA since this will place the Philippines at a disadvantage in the negotiations. We are considered a developing economy as compared to the developed economy of the US. Our key informants believe that what the US wants are more advantageous to them than us.

According to the different key informants from the banking, capital markets and insurance, DOF, PSE, BSP, BAP the following are the issues/areas that would have an impact on their industry and need to be addressed when negotiating for a possible RP-US FTA. These areas/ issues include the following: 1) legal and regulatory framework particularly laws on taxation and corporate rehabilitation/recovery; 2) Capital outflows; 3) Outsourcing; 4) Consumer/Investor Protection; 5) Applicable law for cross border transactions; 6) Foreign Ownership Limitations; 7) E-Commerce Issues; 8) Deepening of the capital markets

There are six economic benefits expected from the proposed RP-US FTA:

1. The relative importance of each country as a trading partner based on current trade patterns
2. Both Countries may Benefit from Greater Transparency in the Regulatory System
3. Market Access by Binding Liberalization
4. Provision for Systematic Process in Negotiating Further Liberalization Within the FTA
5. Access to Capital and Market Liquidity
6. Participation by financial services sector in asset management in the international arena.

## **Summary of Findings and Recommendations**

Based on the interviews conducted, some key informants believe that the RP-US FTA will bring in benefits for the two countries involved. The Free Trade Agreement benefits the countries involved through :

- 1) Updated technologies and robust capitalization would be needed by them to be able to be at par with those services offered by the foreign competitors
- 2) The drive to increase the competitiveness of the products/services offered by the country would increase the skills of our workforce.
- 3) The removal of barriers will make banks more competitive with their US banking counter parties through services that should be able to penetrate markets abroad in a more efficient manner.
- 4) Cross-border transactions can be facilitated and enhanced in the field of investments and provision of other financial and other related services in the host country. This can also provide various access to better business or investment ventures

However, some informants are skeptic on these benefits because of the following.

- 1) The market share of the domestic players might be eaten up by the foreign investors Domestic players would need to raise more capital to be able to address its soundness as well to provide updated technology and equipment to be competitive with the multinational finance investors.
- 2) We are just not yet ready to enter into a free trade agreement with the U.S. The insurance industry for one still needs to address its own problems

### **Negotiating Points for the RP-US FTA**

In negotiating for the FTA, the Philippines must be globally competitive first. The reforms further needed to make the Philippines globally competitive in the financial services industry include the 5<sup>th</sup> protocol in WTO which have not yet been ratified but we are compliant specially in insurance and banking in terms of ownership. (Go, 2004; DOF interviewee, 2004).

Second, regulatory agencies must be in proper agencies and be efficient in initiating changes that would try to bring back sectors that are left out (Go, 2004; DOF interviewee, 2004). For the agreement to work effectively, the Bangko Sentral ng Pilipinas (BSP), the country's regulatory and supervising bank must work autonomously from the government. The exercise of its functions and duties of the BSP as well as other government supervising agencies, like Insurance Commission and the Security and

Exchange Commission must be free from the influence of politics and must ensure free competition among the players. The government must stick to its laws and business policies and must be free from corruption to assure the foreign investors of a reliable governing body. (Banker interviewee, 2004; Anglo, Rodil, Tungol, Vichuaco, 2004).

Third, we need to strengthen SME's within the ASEAN region because this sector shows potential growth. (Go, 2004; DOF interviewee, 2004).

Any FTA negotiation between the two countries should have in mind the enhancement of key services between them, the assurance of fair and non-discriminatory treatment of trade, cost and time savings through streamlined procedures, mutual recognition of each countries' constraints, and to the best extent practicable, the reduction or elimination of tariffs. (Banker interviewee, 2004).

### **POLICY RECOMMENDATIONS IN THE PROPOSED RP-US FTA IN FINANCIAL SERVICES**

Based on the earlier discussions, the RP-US FTA can bring in economic benefits but at the same have negative consequences to the financial services industry. The negotiating panel can adopt the following policy recommendations:

**GATS framework for the RP-US FTA.** The RP-US panels has to establish specific provisions in the financial services industry under the proposed RP-US FTA. As discussed earlier, it can use the GATS framework in negotiating specific provisions for the financial services industry. In the modes of supply under the GATS, it is expected that the investments of both countries will increase. Although, there should be safety nets provided by the Philippine government when further liberalization is allowed in the Philippine financial services industry.

**Reforms in the Capital Market and Governance.** The BSP and SEC should continue with its capital market reforms/governance to ensure transparency in the market governing body. Our key informant from the DOF said that we can deepen the capital markets by harmonizing accounting, practices and taxes and develop regional bond market with ASEAN. We need to develop bond within the ASEAN first specifically with China, Japan and Korea. Also, we can look at the capital market reforms made by Chile and use this a framework for furthering our capital market reforms. The same issue has been raised in the insurance industry. What the local players in the life insurance industry is suggesting is that for them to have closer relationships with their Asian counterparts to be able to match the capitalization of the bigger American insurance companies.

For financial services sector in particular, the FTA should recognize the need to have clear procedures, transparency, governance and harmonization of standards. The Philippines should be able to provide the groundwork for the introduction of innovative

products, and allow participation by financial services sector in asset management in the international arena.

**Review of Philippine financial law and the Philippine Constitution.** The regulatory body must reduce the volume and complexity. There is much to be done for the success of the law. Hence, the government must review its laws on financial services which seek to serve as a mechanism to increase access to Philippine markets for the United States by reducing onerous regulations and burdensome government policies. To apply reciprocity and have a bargaining power during the FTA negotiations, the government must review possible opportunities which will open markets for both countries that will provide a long-term benefit in the future. The bilateral arrangement can offer liberalization of trade which will make the financial services sector more efficient in the delivery of service through competition and provision of more and varied financial related services. Increases in trade and investments that flow between the two countries will lead to financial service providers' giving quality services to its existing and prospective clients.

#### **Legal and regulatory framework particularly laws on taxation and corporate rehabilitation/recovery**

The negotiating panels can discuss on possible tax treaties. At present, Philippine financial services providers find that they are heavily taxed and the tax rate for them and foreign providers are different. The foreign providers have more tax incentives.

There should be a provision for systematic process in negotiating further liberalization within the FTA. It must be noted that the degree of liberalization in the financial services sector will depend on the nature and the extent of the specific commitments that will be made by the two countries to the FTA. The presence of request-offer negotiations cannot be eliminated which sometimes allows compromise in one area to be negotiated against liberalization in another area in the counterparty's market. In fact, one of the most sensitive aspects in the FTA is the financial services sector as it serves as a catalyst towards development of one country.

**Enhancement of Key services.** Any FTA negotiation between the two countries should have in mind the enhancement of key services between them, the assurance of fair and non-discriminatory treatment of trade, cost and time savings through streamlined procedures, mutual recognition of each countries' constraints, and to the best extent practicable, the reduction or elimination of tariffs. An issue is on what economic benefits will the FTA bring to both RP and US? When Chile and Singapore signed the FTAs with the US respectively, there were contextual issues primarily on projected exports and imports trade to show how each country will benefit.

With a possible FTA with the US, the Philippines can review the FTAs of the US with Chile and Singapore, respectively. These FTAs can be used as the framework for

our purposes, policies and objectives. In these agreements, the purposes were to (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities; (2) further strengthening international trading disciplines, (3) foster economic growth in the United States and globally, and (4) promote environmental and worker rights policies in the context of trade. However, a question that is to be raised is the foreign ownership constraint based on the Philippine Constitution. How do we reconcile the specific provisions of the FTA with regards to financial services without violating the Philippine Constitution.



# **Implications of an RP-US FTA on the Philippine Financial Services Industry and the Philippine Economy**

Dr. Leila Calderon-Kabigting<sup>1</sup>  
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## **1.1. Introduction**

The United States of America (USA) has signed separate free trade agreements (FTA) with two countries, Singapore and Chile. Both FTAs are expected to bring in bilateral and regional economic benefits to the US and Chile and the US and Singapore. On May 6, 2003, President George W. Bush signed a Free Trade Agreement with Singapore, the first Asian country to do so with the US. This was done under the Enterprise Asean Initiative (EAI) where the US and individual Asean countries can explore the possibilities of launching FTA negotiations. With this framework, this paper seeks to determine the Implications of an RP- US FTA on the Financial Services Industry and the Philippine Economy. The project will present the various policy options for the Philippines to maximize the benefits of an improved economic partnership with the United States. The study will also look at how present laws such as the Anti-Money Laundering Act, General Banking Act, Securities Regulation Code, and Insurance Code of the Philippines meet the framework requirements of the FTA. Also, the study examines at how Basel2 and International Accounting Standards (IAS) will affect the FTA negotiations between the US and the Philippines. The study will also cover market access for financial services in the modes of supply, i.e. cross border trade, consumption abroad, commercial presence and movement of natural person and treatments i.e. national treatment, most favored nation treatment.

The Philippines initiated financial liberalization in the 80s. Within the past decade, foreign banks and foreign insurers were allowed to enter the market but their

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number is still limited. Although, liberalization has taken place, the Philippines still has a long way to go in improving its financial services industry compared with its Asean neighbors.

## **1.2. Objectives of the Study**

**The following are the objectives of the research project:**

1. Identify areas/issues, particularly, those impacting on banking, insurance and securities, to be discussed when negotiating for a possible RP-US FTA.
2. Discuss the present system of bilateral flows between the Philippines and the United States in terms of the financial service industry.
3. Identify the possible modes of supply and access in financial services, which will be included in the FTA to meet the changes of globalization.
4. Assess the impact of these flows and modes of supply to the Philippines
5. Determine how the Philippines will benefit economically from a financial services FTA with the US
6. Propose policy options that the Philippines can explore to maximize the benefits and lessen the negative consequences of these flows and modes.

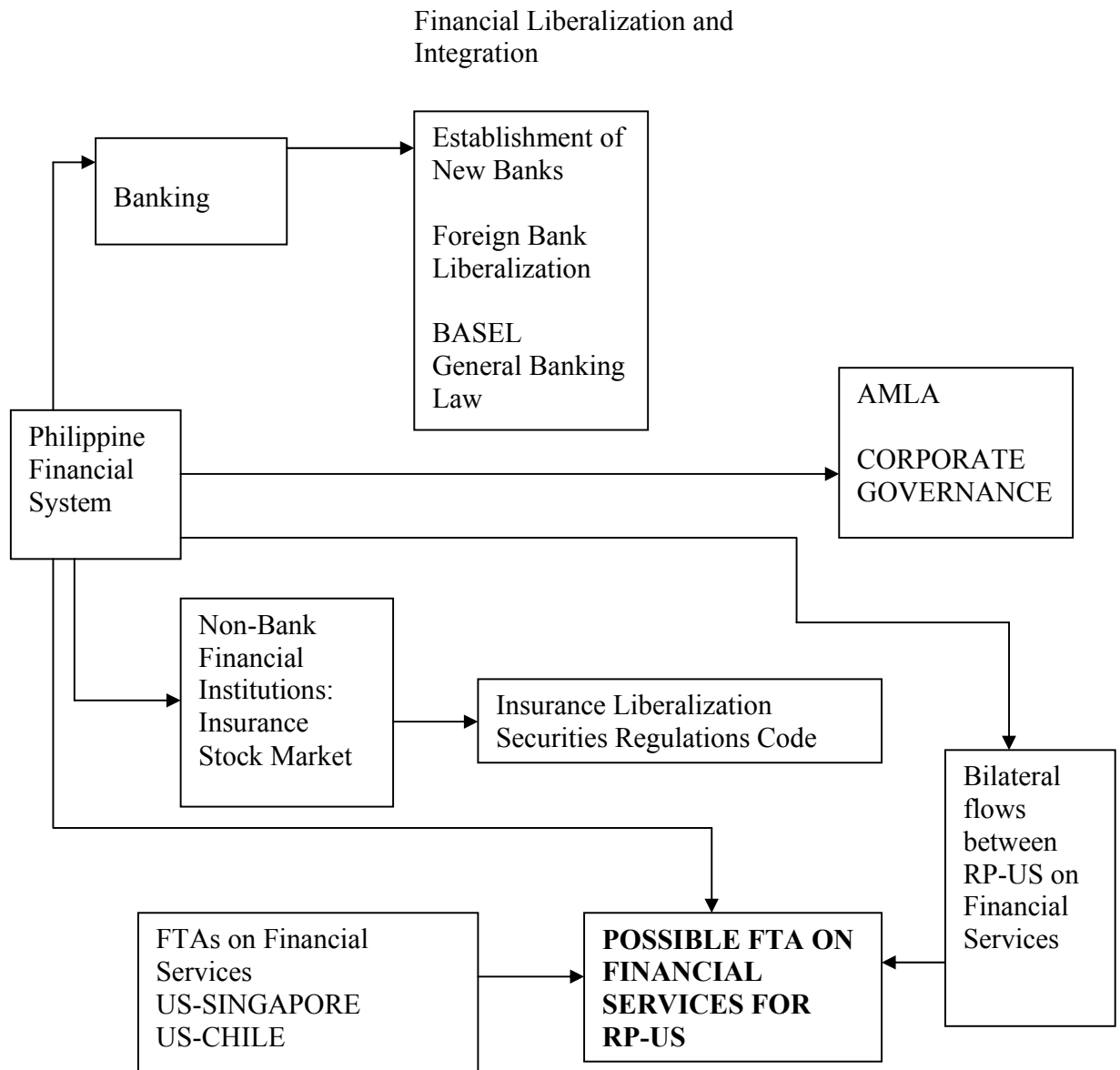
## **1.3. Background on the Liberalization of Financial Services**

The Philippines instituted reforms liberalizing the financial services industry particularly, banking and insurance over the last ten years. But the question remains is if liberalization has improved the performance of the financial services industry. What has happened to the financial services industry and where is it headed under a liberalized regime?

Figure 1 presents the Philippine Financial System which is composed of the banking and non-banking financial institutions. The banks include universal banks, commercial banks, thrift banks, rural banks and the non-financial institutions for this study will be limited to insurance and the stock market.

For the financial institutions, reforms were introduced in the 80s, 90s and starting year 2000 (see Figure 1). These reforms focused on interest rate liberalization and reserve requirements. The reforms aimed to improve the performance of the financial institutions, have better bank supervision, and increased transparency. The reforms give an insight of how the Philippine financial system has improved and how it compares with Chile and Singapore to prepare it for a possible free trade agreement with the United States of America.

**Figure 1 Liberalization of Financial Services and a Possible RP-US FTA**



Intal (2001) cited Fischer and Riesn, 1993; Claessens and Glaessner, 1997 for the presumed benefits of financial liberalization:

- ❖ Reduction in the cost of financial intermediation (increase in operational efficiency of the financial institutions)
- ❖ Improvement in the range of financial services and products adaptable to the changing tastes and requirements of consumers and industries (dynamic efficiency) and
- ❖ The increased potential for savings to be allocated to the highest yielding investments for the economy (improvement in allocative efficiency)
- ❖ Better access to foreign capital
- ❖ Better domestic financial infrastructures

## **2 Areas/Issues Impacting on Banking, Insurance and Securities**

### **2.1. Review of the Liberalization of Financial Services in the Philippines**

The country has had several reforms during the liberalization, particularly the banking sector. Intal (2000) considered financial liberalization in two perspectives, namely, the country's openness to international capital movement and the financial sector's openness to foreign equity participation. In his evaluation of the risks and opportunities of financial liberalization and integration in the APEC Region, he mentioned that while various risks are present in a liberalization, economies derive net benefits by stimulating their economic growth.

The expansion of trade in goods and services had facilitated in the search by various countries to enter into bilateral, regional or even multilateral trading arrangements with other countries. The WTO's GATT and GATS are not the end goal of every country to international trade expansion. In fact, it recognizes the members' rights to regulate and/or introduce new ones based on their respective policy objectives, the degree of development of services regulations and the particular need of developing countries to exercise this right. [http://www.wto.org/english/docs\\_e/legal\\_e/articleV](http://www.wto.org/english/docs_e/legal_e/articleV)

Under the GATS, the financial services, is one of the world's utmost concerns that must be addressed with zealously. It plays an important role in helping the countries build financial systems that are stable, very competitive and efficient. It can also enhance greater mobility in the financial sector that plays a vital role in the country's development. For the Philippine financial system, it is pivotal to the country's development, as many industries rely on its significant contribution in providing credit and in mobilizing savings.

The issue lies on how the free trade agreement will bring maximum benefits, either strategic or economic, for the two parties involved. Austria (2002) cited that the thrust towards integration or cooperation lies on the intensive trade liberalization and regionalism in various economies. Given the asymmetries existing among countries with

respect to their respective developments and the progress of their trade and services regulations, a country's development results to the stagnation of the other.

Of the regional trading arrangements, a free trade area is quite easy to handle compared to multilateral arrangements. This is because negotiations would be easier for two countries compared to many negotiating countries that are subjected to various regulations and requirements for the free trade agreement.

A review of some of the free trade arrangements made by selected countries in the Asian region will attest positive or negative benefits thereto. Two of the countries that protected their positions in the Asian region during the past are China and Japan. However, the same did not last; as many countries were moving toward close economic integration that went beyond the confines of their proximate neighboring countries. Moreover, the successful Doha/Uruguay Rounds paved way to more liberalized system.

These selected FTAs reflect an aggressive stance by the government to keep up with the growing international demands. Like other authors, Avila (2004) mentioned that a free trade agreement would be significant only when it provides greater benefit for both parties not outlined in the WTO agreement, which must be comprehensive in scope and depth of liberalization.

Other conditions inherent in a successful FTA are its consistency with the WTO's principle on national treatment and most-favored nation (MFN) issues, its flexibility and its institutional features must be undertaken considerably.

Austria (2003) lists Bilateral and Regional Trading Arrangements in the East Asia. Of the specific arrangements, only APEC, AFTA and ASEAN were those that were successfully undertaken by the Philippines. On the other hand, the most recent economic cooperation between Japan and Philippines did not spell out any mutual consideration regarding financial services (Pasadilla, 2003).

Its proposed free trade agreement with the United States, which it targeted to be negotiated in 2002, has not yet started. Hopefully, it will be scheduled for more meaningful negotiations in 2005. The strong strategic partnership with the United States of America would signal an excellent growth prospect for the country and complement its existing bilateral agreements and regional cooperation.

To date, Philippines had not actively participated in the negotiation by member countries particularly in implementing progressive liberalization for Trade in Services. Pasadilla (2003) cited that while the country made specific commitments to financial services, it did not sign in the Understanding of Commitments in Financial Services by listing non-conforming measures instead of the restrictive policies/system in the financial services industry. Thus, it becomes obligatory to a country to grant MFN and National treatment to the counterparty. In view of this, it must also be committed to the four modes of supply provided in the GATS Article XVI.

In her review of the commitments, she opined that the country must improve its regulatory structure in line with the other trading partners worldwide by providing incentives to foreign financial institutions to operate in the domestic market and allow the regulatory bodies to keep up with the best practices in the various areas of regulation and supervision.

## **2.2 Banking Regulations and Foreign Bank Entry**

### **2.2.1. Banking Regulations**

In most economies, the regulatory framework is characterized by the operation of several financial regulators, each financial institution is subject to the regulatory requirements of more than one authority. With this, regulation is believed to be well-implemented and monitored as regulators can focus on the specific needs of the industry.

However, in practice, result of the regulation is not all-inclusive. The issue lies on the overlapping objectives set by each body that may sometimes become in conflict among laws and regulations implemented by another and could pose problems that may sometimes lead to destabilization or backwardness.

Most of the countries in the APEC region have traditional regulatory frameworks that are characterized by various regulatory agencies inside and/or outside the central banks and/or the commerce or finance ministries. Philippines adopt this kind of set-up, with the Bangko Sentral ng Pilipinas being tasked with the responsibility of regulating and supervising the operations of the banks and other financial institutions performing related functions.

Article XIX on negotiation of specific commitment provides that, “...any negotiation shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.” [http://www.wto.org/english/docs\\_e/legal\\_e/articleV](http://www.wto.org/english/docs_e/legal_e/articleV)

There is a clear line of distinction in the way each party to an agreement should conduct itself. While the focus of this discussion is financial services, it shows that Philippines has partially committed itself to the WTO round on General Agreement on Trade in Financial Services in 1997. In fact, in its recent Cancun Ministerial meeting, the European Community (EC) submitted a report highlighting its specific requests from the Philippines to accept the Fifth Protocol. Among those that were highlighted involved market access and mode of supply, most-favored nation and national treatment issues: <http://www.gatswatch.org/docs/offreq/EUrequests/Philippines.pdf>: Retrieved: August 12, 2004

1. Removal of restrictions on limitation of ownership to 70% of the total assets of the banking system must be owned by the Citizens of the Philippines.
2. Suppression of the cap on the restrictions on foreign shareholdings to various sectors.
3. Elimination of the limitation on the number of branches that must be held by foreign commercial banks.
4. Removal of the restriction imposed on foreign banks for the use of “Net Due to Head Office to Assigned Capital to 4:1.
5. Removal of the nationality requirement for members of the Board in various sectors.
6. Philippine Banking laws on the specific criteria that must be followed regarding specific requirements for commercial banks and investment houses.
7. Application of specific requirements on lending to SMEs and agro-business.
8. Access by foreign banks to use parent’s capital to meet prudential requirements of BSP regarding capital to risk-weighted assets, even if their home country regulation and supervision has met the Basle or equivalent standards.
9. To take into account the guarantee made by the branch’s head office or by another foreign bank for lending volume.

These concerns are quite difficult to handle which the European Council finds it very restrictive not only for them but also for the economies that are members to the WTO. An examination of these issues brings us back to the constitutional impediments, which every country has and is unique, compared to their trading partners.

Article I of GATS considered the member countries’ individual dispositions in fulfilling specific commitments and obligations under the Agreement. That each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory. Moreover, the differences existing with respect to the degree of development of services regulations in different countries and its particular needs to exercise its right must be in line with its national policies and overall trade goals. [http://www.wto.org/english/docs\\_e/legal\\_e/articleV](http://www.wto.org/english/docs_e/legal_e/articleV)

This involves the Philippines’ willingness to make its specific commitments towards the WTO. This necessitates the creation of the economic and institutional prerequisites that enable the country to monitor and gradually comply with economic and political criteria for successful free-trade agreement with the United States. This is a good start for a better assessment of a more competitive financial environment that supports the development of the economy. The issues raised by the European Council of country’s commitment for the banking services sector affect the country’s future economic and international trading arrangements with other economies. This only reflects how the Philippines binds itself to what had been accepted in the international arena.

The Philippines has undertaken various reforms to improve the financial services industry. The opening up of the financial services industry to foreign markets give local players a chance to see what the foreign players are doing and how they can compete with them. The succeeding discussions will show how foreign banks performed and how they have affected the banking industry. However, this may not level the playing field. Foreign players are obviously more advanced in terms of technology and products being offered and more capitalized against its local counterparts. This may force the local companies to merge to keep up with the foreign competitors. However, local firm can learn or adopt the best practices from their foreign counterparty. There could also be a transfer of skills. But, there is a need for local government to set the groundwork for improved regulation and supervision, transparency through better disclosure rules.

Even if the country liberalized trade and trade in financial services as early as 1980s, it shows that the move towards liberalization were also limited, just like other emerging countries in the Asia Pacific region. This is because the government considered the welfare of the people and the industries that will be significantly affected by the drastic move towards liberalization in line with the requirements of the GATT and GATS.

Hence, the benefits were still modest particularly when one considers the impact of Asian and Russian crises. The banking industry was able to withstand modest financial shocks because of the cautious financial reforms that were implemented by the regulatory body as a result of financial liberalization. Thus, it can be concluded that financial liberalization is not the problem but the political economy of liberalization.

### **2.2.2. Analysis of Foreign Bank Entry on Bank Operations**

Shown in the succeeding pages are financial highlights of foreign bank performance vis-à-vis entire commercial and Philippine banking industry's performance. Studies conducted by Unite (2001), Hapitan (2002), Claasens (2002), Milo (2001), Dages (2000), Sanchez et.al. (2003) reveal that foreign bank entry provide beneficial advantage to the host country's banking system in terms of increased competitiveness and operational efficiency, among others.

Selected financial ratios such as capital adequacy, profitability, and efficiency that were generated revealed that foreign banks showed better financial results compared to the local banks. Commercial banks were not very much affected by the foreign bank entry compared to the thrift banks.

Clark, et. al. (2003) cited that the pattern and timing of entry of foreign banks in a country would depend on the market opportunities, barriers to entry, tax treatment in the host country and potential and/or existing economic integration between two countries. These reasons emerge as a result of financial liberalization and internationalization of financial services.

Table 1



### Participation of Foreign Banks in the Banking Industry

| Country       | Share |
|---------------|-------|
| Chile         | 32%   |
| Philippines   | 12.8% |
| Singapore     | 50%   |
| United States | 4.7%  |

In their compilation of concentration or foreign participation in the total banking industry's assets in a country as of 1998, it shows that the United States of America had the lowest share, with only represent 4.7 per cent compared to its first regional partner in the Southeast Asia. In Singapore, foreign banks' share is approximately 50% of the industry's total assets. According to the authors, the low share of foreign banks in the United States can be attributed to the differing laws on foreign bank entry grouped according to geographical location.

Most studies on foreign bank entry mentioned that the opportunities available to the foreign banks in tapping the market being serviced by the domestic banks drive these banks for cross-border operations. Focarelli and Pozzollo (2000), Bonin and Abel (2000) consider the profit-taking opportunities available to them especially in emerging markets. On the other hand, Claessens, Kunt and Huizinga (1998), Buch (2000) and DeYoung (1996) also consider the economic benefits in the form of taxes, comparative advantages.

Moreover, Crystal, Dages, and Goldberg (2002) opined that the trend towards cross-border operations has increased the ownership share of the foreign banks in the emerging markets. Like other authors, they claimed that ownership of banks in the emerging markets by the foreign counterparts improves overall bank soundness, especially when the foreign parent banks belong to well-regulated financial systems and are themselves healthy.

Shown in the succeeding page is the time-series data on the total assets held by foreign banks in the banking industry. Since the liberalization of foreign bank entry in 1994, total assets held by these banks gradually increased over time.

The comparative results for the commercial banking industry and the Philippine banking industry reveal that most of the foreign banks ventured into commercial banking compared to thrift and rural banking to maximize their operations. This was confirmed in the study conducted by Hapitan (2000) where competition was seen in the field of wholesale banking.

Table 2

10-year Share of Foreign Banks on the  
Total Assets Held in the Banking Industry  
(1995-2004)

| YEAR | WITH COMMERCIAL BANKING INDUSTRY | WITH PHILIPPINES BANKING INDUSTRY |
|------|----------------------------------|-----------------------------------|
| 1995 | 6.84%                            | 6.09%                             |
| 1996 | 10.80%                           | 9.62%                             |
| 1997 | 12.52%                           | 11.34%                            |
| 1998 | 14.76%                           | 13.33%                            |
| 1999 | 14.10%                           | 12.79%                            |
| 2000 | 15.65%                           | 14.21%                            |
| 2001 | 16.53%                           | 14.90%                            |
| 2002 | 15.40%                           | 13.88%                            |
| 2003 | 15.14%                           | 13.67%                            |
| 2004 | 15.00%                           | 13.51%                            |

Compiled by the researcher from the PDIC website [http://www.pdic.gov.ph/bpmc/\\_/timeseries/june2004/](http://www.pdic.gov.ph/bpmc/_/timeseries/june2004/)

As can be recalled, additional 10 foreign bank licenses were provided by the country aside from the four (4) pioneer foreign banks in the Philippine banking history. After the Asian Financial Crisis in 1997, foreign banks' share in the total assets increased, particularly in 2001 where it registered a 16.53 per cent share to the entire commercial banking industry. Hence, the results are still very satisfactory as far as the Philippine government is concerned in protecting the Philippine banking business. This was also outlined in Section 73 of the General Banking Act of 2000:

In the exercise of this authority, the Monetary Board shall adopt measures as may be necessary to ensure that at all times the control of seventy percent (70%) of the resources or assets of the entire banking system is held by banks which are at least majority-owned by Filipinos.

Moreover, as can be gleaned in the succeeding table, it shows that the number of foreign banks increased from thirteen (13) in 1995 to eighteen (18) in 2004. The statistics of foreign banks from 1998 to 2004 can be attributed to the merger or sale of banks in the industry where some of them were acquired by local banks and converted into a thrift bank.

Table 3

Number of Commercial Banks by Operating in the Philippines Grouped by Bank Classification for the Period 1995-2004

| Year | Foreign Banks | Expanded/ Universal Banks | Regular KB | Special Government Banks | Commercial Banking Industry |
|------|---------------|---------------------------|------------|--------------------------|-----------------------------|
| 1995 | 13            | 17                        | 14         | 3                        | 47                          |
| 1996 | 17            | 18                        | 11         | 3                        | 49                          |
| 1997 | 17            | 18                        | 16         | 3                        | 54                          |
| 1998 | 18            | 18                        | 14         | 3                        | 53                          |
| 1999 | 19            | 16                        | 14         | 3                        | 52                          |
| 2000 | 19            | 12                        | 11         | 3                        | 45                          |
| 2001 | 18            | 12                        | 12         | 3                        | 45                          |
| 2002 | 19            | 12                        | 8          | 3                        | 42                          |
| 2003 | 19            | 12                        | 8          | 3                        | 42                          |
| 2004 | 18            | 12                        | 9          | 3                        | 42                          |

Compiled by the researcher from the PDIC website  
[http://www.pdic.gov.ph/bpmc/\\_/timeseries/june2004/](http://www.pdic.gov.ph/bpmc/_/timeseries/june2004/)

Table 3 reveals that compared to the expanded and regular commercial banks operating in the country, foreign banks' share a bigger portion of the total commercial banking industry, with the biggest share that was originally shared by expanded commercial banks. With the advent of the mergers and consolidation, in line with BSP's capital build up program from 1998-2000, this fostered to the reduction of banks. This only proves that the Philippines is moving towards providing a more liberalized banking system.

As can be recalled in the study conducted by Clark, et. al. (2000), foreign banks' participation represent 12.8 per cent. This may be due to the limitation in the number of branches that can be established by foreign banks. This was also exemplified in the studies conducted by Milo (2001) where she cited that the Philippine banking industry is characterized by many small weak banks and few big banks that control the banking business.

Selected financial ratios that were generated revealed that foreign banks showed better financial results compared to the local banks. Commercial banks were not very much affected compared to thrift banks and rural banks like the thrift banks.

Table 4

Share of Foreign Banks on the Gross Loans Vis-à-vis Commercial Banking Industry and  
Philippine Banking Industry and the Yield on Loans Ratios  
for the Period 1995-2004

| Year | Percentage Share          |                                   | Yield on Loans* |                                   |                                   |
|------|---------------------------|-----------------------------------|-----------------|-----------------------------------|-----------------------------------|
|      | Share ags.<br>KB Industry | Share ags.<br>Banking<br>Industry | Foreign Banks   | Commercial<br>Banking<br>Industry | Philippine<br>Banking<br>Industry |
| 1995 | 7.71%                     | 6.81%                             | 10.02%          | 12.03%                            | 12.67%                            |
| 1996 | 10.69%                    | 9.47%                             | 10.06%          | 11.05%                            | 12.57%                            |
| 1997 | 12.40%                    | 11.13%                            | 10.88%          | 14.98%                            | 13.98%                            |
| 1998 | 12.08%                    | 10.86%                            | 12.49%          | 13.43%                            | 14.61%                            |
| 1999 | 14.17%                    | 12.81%                            | 10.27%          | 11.62%                            | 11.58%                            |
| 2000 | 16.50%                    | 14.89%                            | 9.71%           | 13.67%                            | 11.20%                            |
| 2001 | 17.67%                    | 15.84%                            | 9.17%           | 12.95%                            | 11.33%                            |
| 2002 | 17.24%                    | 15.36%                            | 7.25%           | 8.82%                             | 8.55%                             |
| 2003 | 16.63%                    | 14.82%                            | 7.08%           | 7.73%                             | 8.33%                             |
| 2004 | 16.74%                    | 14.91%                            | 7.92%           | 11.09%                            | 8.72%                             |

Compiled and computed by the researcher from PDIC website

\* Interest Income on Current Loans/Ave. Current Loans

Table 5

Gross Loans/Total Assets Ratios of Foreign banks, Commercial Banking Industry and  
Philippine Banking Industry for the Period 1995-2004

| Year | Foreign<br>Banks | Commercial<br>Banking Industry | Philippine<br>Banking Industry |
|------|------------------|--------------------------------|--------------------------------|
| 1995 | 67.51%           | 59.80%                         | 60.19%                         |
| 1996 | 63.60%           | 64.04%                         | 64.27%                         |
| 1997 | 61.07%           | 61.73%                         | 62.29%                         |
| 1998 | 49.12%           | 59.92%                         | 60.15%                         |
| 1999 | 57.78%           | 57.09%                         | 57.29%                         |
| 2000 | 56.69%           | 53.38%                         | 53.71%                         |
| 2001 | 56.68%           | 52.34%                         | 52.78%                         |
| 2002 | 57.27%           | 50.25%                         | 51.01%                         |
| 2003 | 55.06%           | 51.20%                         | 51.81%                         |
| 2004 | 57.45%           | 51.03%                         | 51.64%                         |

Compiled and computed by the researcher from the PDIC website (Statement of Condition and Statement of Income and Expenses <http://www.pdic.gov.ph/bpmc/ /timeseries/june2004/>)

Over the ten-year period, foreign banks have been aggressive in their lending portfolios, particularly after during the 21<sup>st</sup> century. Foreign banks exhibited higher

average loan growth over the years as most banks deliberately reduced their portfolios to minimize credit and financial risks.

Since most of the commercial banks are involved in wholesale banking compared to private or retail banking, their lending activities were not much affected as they are more likely to get good accounts, particularly from MNCs operating in the country or residents of their home country that have foreign direct investments in the Philippines.

Compared to the local counterparts, foreign banks are able to generate low yields on their credit transactions as that they have limited loan transactions and they are less likely to charge higher interest rates compared to the local banks. As mentioned by Claessens, Kunt and Huizinga (1998), other economic benefits in the form of taxes, comparative advantages and gain in the financial market are considered.

Table 6

Non-Performing Loans/Gross Loans and Non-Performing Loans/Total Assets Ratios for Foreign Banks, Commercial Banking Industry and Philippine Banking Industry for the Period 1995-2004

| YEAR | FOREIGN BANKS |        | COMMERCIAL BANKING INDUSTRY |        | PHIL. BANKING IND. |        |
|------|---------------|--------|-----------------------------|--------|--------------------|--------|
|      | NPL\GL        | NPL\TA | NPL\GL                      | NPL\TA | NPL\GL             | NPL\TA |
| 1995 | 2.47%         | 2.59%  | 6.34%                       | 5.78%  | 3.99%              | 3.30%  |
| 1996 | 1.77%         | 2.44%  | 4.06%                       | 4.04%  | 3.52%              | 3.05%  |
| 1997 | 2.42%         | 4.28%  | 7.53%                       | 6.42%  | 5.42%              | 4.36%  |
| 1998 | 3.93%         | 10.56% | 13.77%                      | 12.37% | 11.06%             | 8.89%  |
| 1999 | 3.61%         | 13.25% | 16.30%                      | 13.75% | 12.76%             | 11.32% |
| 2000 | 4.29%         | 15.79% | 17.20%                      | 15.28% | 14.32%             | 12.39% |
| 2001 | 4.58%         | 18.07% | 24.09%                      | 19.60% | 16.39%             | 14.26% |
| 2002 | 3.68%         | 18.02% | 16.93%                      | 17.60% | 15.49%             | 13.88% |
| 2003 | 3.76%         | 18.42% | 18.64%                      | 17.95% | 15.80%             | 14.12% |
| 2004 | 3.05%         | 16.73% | 16.61%                      | 14.89% | 14.24%             | 13.02% |

Compiled and computed by the researcher from the PDIC website (Statement of Condition and Statement of Income and Expenses) [http://www.pdic.gov.ph/bpmc/\\_timeseries/june2004/](http://www.pdic.gov.ph/bpmc/_timeseries/june2004/)

For the three sectors being compared, namely foreign banks, commercial banking industry and Philippine banking industry, it shows that after 1998, yield on loans declined gradually. Many banks became cautious in their lending operations and limited the same to a greater extent. Moreover, the higher ratios in 1998 did not really reveal an increase

or improvement in the credit performance but were attributed to the high interest rates after the crisis from a low of 18.1 per cent to a high of 21.5% (<http://www.bsp.gov.ph/statistics/spei/tab19.htm>)

Immediately after the Asian Financial Crisis, banks were exposed to large credit risks that increased the non-performing loan ratios. For the ten-year period, foreign banks have low non-performing loans to gross loan ratios ranging from a low of 1.77 in 1996 to a high of 4.58% in 2001. This is very minimal compared to the commercial banking industry's exposure where it showed the lowest and highest exposures for both years (1996 and 2001).

The commercial bank's high non-performing loans to gross loan ratios can be attributed to regular domestic bank's exposure. As can be recalled, at the height of financial boom in the Asia Pacific Region, many banks, particularly commercial banks were involved in financing real estate activities in their respective economies. The ultimate result of which was a pronounced deterioration of asset quality and greater loss-absorption capacity for domestic banks. Thus, it only reveals that the foreign banks were able to provide benefits for the banking industry and are more efficient in the providing credit compared to their domestic counterparts.

On the other hand, the results for the entire banking industry's ratios were low compared to the commercial banking industry as rural banks and thrift banks were not heavily dependent of wholesale loan transactions and their loan exposures are not that large. Foreign banks' high NPL/Total Assets ratios can be attributed to the limitation in the number of branches that can be established in the country. Moreover, this only proves that most foreign banks' assets are loan transactions. Unlike their domestic counterparts, particularly commercial banks, they can establish many branches as long as the regulatory body permits any expansion or branching activity in a financial key area.

With regard the foreign banks' access to funding sources, it shows that they heavily relied from low costs funds in the form of deposits compared to deposit substitutes (total borrowings), as can be gleaned in Table 7. Hence, when compared to the domestic counterparts, results shown above are very meager as expanded commercial banks have greater access to low costs funds. (please see PDIC's time series data for Statement of Conditions: [http://www.pdic.gov.ph/bpmc/\\_/timeseries/june2004](http://www.pdic.gov.ph/bpmc/_/timeseries/june2004)).

Table 7

Share of Foreign Banks on the Access to Funds Sources (Total Deposits and Total Borrowings) Vis-à-vis Commercial Banking Industry and Philippine Banking Industry and the Yield on Loans Ratios for the Period 1995-2004

| Year | Total Deposits         |                             | Total Borrowings       |                             | Cost of Funds |                             |                             |
|------|------------------------|-----------------------------|------------------------|-----------------------------|---------------|-----------------------------|-----------------------------|
|      | Share ags. KB Industry | Share ags. Banking Industry | Share ags. KB Industry | Share ags. Banking Industry | Foreign Banks | Commercial Banking Industry | Philippine Banking Industry |
| 1995 | 4.65%                  | 4.12%                       | 3.76%                  | 3.40%                       | 8.69%         | 6.21%                       | 6.64%                       |
| 1996 | 5.13%                  | 4.52%                       | 3.94%                  | 3.60%                       | 10.49%        | 5.88%                       | 6.99%                       |
| 1997 | 7.80%                  | 7.00%                       | 4.73%                  | 4.41%                       | 13.25%        | 9.04%                       | 7.98%                       |
| 1998 | 9.61%                  | 8.69%                       | 4.41%                  | 3.93%                       | 13.73%        | 7.98%                       | 8.43%                       |
| 1999 | 12.44%                 | 11.35%                      | 4.74%                  | 4.30%                       | 9.15%         | 6.20%                       | 6.34%                       |
| 2000 | 15.05%                 | 13.74%                      | 6.47%                  | 5.86%                       | 8.67%         | 7.58%                       | 6.08%                       |
| 2001 | 15.08%                 | 13.65%                      | 9.15%                  | 8.29%                       | 8.03%         | 6.64%                       | 6.21%                       |
| 2002 | 13.95%                 | 12.60%                      | 8.65%                  | 7.90%                       | 4.87%         | 3.46%                       | 3.86%                       |
| 2003 | 13.24%                 | 11.85%                      | 10.19%                 | 9.37%                       | 4.62%         | 2.84%                       | 3.57%                       |
| 2004 | 13.41%                 | 11.98%                      | 10.12%                 | 9.37%                       | 3.54%         | 4.42%                       | 3.66%                       |

Compiled and computed by the researcher from the PDIC website (Statement of Condition and Statement of Income and Expenses [http://www.pdic.gov.ph/bpmc/\\_/timeseries/june2004/](http://www.pdic.gov.ph/bpmc/_/timeseries/june2004/))

Foreign banks have the ability to attract good deposits or funds due to their sophisticated financial architecture and high interest rates.

The same findings were applicable for loan transactions and other deposit substitutes of the expanded commercial banks. This supports the findings of Crystal, Dages, and Goldberg (2002) and Dages, Goldberg and Kinney (2000) on funding sources. Less reliance on traditional funds, particularly those solicited from local sources are acceptable realities on the operations of foreign banks, particularly those coming from foreign parent banks belong to well-regulated financial systems and are in themselves healthy.

The domestic expanded commercial banks are able to maximize their efficiency as far as volume is concerned. As far as other borrowing transactions are concerned, big foreign banks easily get access to foreign funding provided by their correspondent banks and International Financial Institutions at lower costs.

The time series results for the cost of funds incurred by banks revealed that average costs of funds significantly declined over the years. While foreign banks are less efficient in reducing their costs of funds (both low and high sources), the decreasing ratios over time can be attributed to the deliberate effort on the part of the Philippines to liberalized the financial system in its commitments to the WTO-GATS and other regional trading arrangements entered into with neighboring economies like APEC, AFTA and other RTAs. Hence, the strength of foreign banks' loan growth with low non-performing loan ratios may also be attributed to their access to a broader and more diverse funding base.

Table 8

Return on Assets Ratios of Foreign Banks, Commercial Banking Industry and Philippine Banking Industry for the Period 1995- 2004

| Year | Foreign Banks | Commercial Banking Industry | Philippine Banking Industry |
|------|---------------|-----------------------------|-----------------------------|
| 1995 | 2.56%         | 2.12%                       | 2.13%                       |
| 1996 | 1.83%         | 2.18%                       | 2.17%                       |
| 1997 | 1.30%         | 1.76%                       | 1.72%                       |
| 1998 | 0.71%         | 0.85%                       | 0.79%                       |
| 1999 | -0.06%        | 0.40%                       | 0.41%                       |
| 2000 | 0.85%         | 0.42%                       | 0.38%                       |
| 2001 | 1.31%         | 0.43%                       | 0.42%                       |
| 2002 | 1.32%         | 0.81%                       | 0.78%                       |
| 2003 | 1.09%         | 0.90%                       | 0.85%                       |
| 2004 | 1.57%         | 1.16%                       | 1.09%                       |

To measure whether foreign banks benefited from their intermediation activities or foreign operations in the Philippines, return on assets ratios were generated for foreign banks, commercial banking industry and Philippine Banking industry. While profitability were declining for the banking industry over the ten-year period, foreign banks revealed slightly positive results. It can be seen that after Year 2000, foreign banks' profitability ratio improved at increasing pace. Hence, for the commercial and Philippine banking industry, they showed declining and erratic ratios, especially after the Asian Financial crisis.

This can be attributed to the limited operational activities of the foreign banks compared to domestic counterparts that are heavily involved in branching activities.



Thus, the absorbed losses or lower income generated from retail or private banking activities were included in the measure of financial results for these banks.

It can be deduced that foreign banks' presence does not necessarily increase the performance of these banks. Hence, efficiency in the financial system can be felt as it boosts competition, particularly for domestic banks, in providing sophisticated financial architecture for the banking public.

## **2.3. The Stock Market and Securities Regulation**

### **2.3.1. Securities Regulations Code**

RA 8799, the Securities Regulation Code, effective August 2000 provided a more transparent securities market through full disclosure of material information about listed companies to investors, increased penalties for insider trading and other securities fraud, imposed higher standards for market participants consistent with international best practices; codified the role of stock exchanges and other self-regulatory organizations in enforcing the securities laws and their rules against members and participants and strengthened the Securities and Exchange Commission in overseeing the stock market. (Tullao, Calderon, Villanueva, 2001). Its Implementing Rules and Regulations have been amended to better promote efficiency and transparency in securities transactions. (BSP interviewee, 2004).

The country's equity market currently has 317 issues traded, only about 70 issues are trade on daily basis. (Santos, 2004). Table \_\_\_ shows that the Philippine Stock Exchange managed to post one of the biggest improvements last year among its closest Asian neighbors, outperforming even the exchanges of Singapore and Hong Kong. The composite index jumped by 26.4% last year to 1,822.83 index points from 1,442.37 points a year ago. (Business World, January 26, 2005).

### 2.3.2. Stock Market

Table 9

#### Asian Equities Market

| Country    | Market Capitalization | % Change from 2003 | Composite Index | % Change from 2003 |
|------------|-----------------------|--------------------|-----------------|--------------------|
| Hong Kong  | 43,007.66             | Up 8.39%           | 14,230.10       | Up 13.15           |
| Singapore  | 15,412.78             | Up 23.14%          | 2,066.14        | Up 17.09%          |
| Malaysia   | 9,995.61              | No data            | 907.43          | Up 14.29           |
| Thailand   | 6,601.61              | Down 1.78%         | 668.93          | Down 13.48%        |
| Philippine | 4,783.91              | Up 60.87%          | 1,822.83        | Up 26.38%          |

Source: Business World, January 26, 2005, p.25.

The same table shows that in terms of market capitalization, the PSE also registered the fastest increment at 60.87% among bourses in the Southeast Asian region. However, the local bourse market capitalization remains small compared to the other Asian equities market of Hong Kong and Singapore. (Business World, January 26, 2005).

There is a need to introduce reforms to modernize the domestic capital market. Bangko Sentral ng Pilipinas Governor Rafael B. Buenaventura, at the Asian Capital Markets Forum of The Asset Magazine, said “the country continues to make progress in its efforts to develop the capital market but urged for an accelerated implementation of financial sector reforms to achieve faster economic growth. The reforms towards the development of the Philippine capital market : 1) Legal and Tax Reforms; 2) the need for a modern financial infrastructure that will facilitate the trading, efficient settlement and proper disposition and accounting of securities in the secondary market. 3) Strengthening Banking Institutions. Further would reforms include provision of efficient and sustainable forum for domestic companies to raise long-term capital at a reasonable and competitive cost, via public offerings of equity and debt instrument; availability of different investment products; strengthening of the disclosure based regulation regime. (Business World, January 26, 2005

Also, there is a need to stimulate the economic growth of the companies listed but not actively traded. Recently, there was renewed interest in the mining sector since the Supreme Court has decided that foreign investors can invest in the mining sector.

The structure of the Philippine Stock Exchange adheres to the Foreign Investment policy. The Philippine policy on foreign investments is contained in Republic Act (RA) No. 7042, as amended , otherwise known as the Foreign Investment Act of 1991 (FIA).

In section 2 of the FIA, it is expressly states that there shall be no restrictions on foreign ownership and that foreigners can invest up to a hundred percent (100%) equity in Philippine businesses, except in areas included in the Regular Foreign Investment Negative List (RFINL). (PSE Fact Book 2003).

The listing requirements of the Philippine Stock Exchange (PSE) are cumbersome, and local companies sometimes prefer to list abroad. For example, the PSE requires a minimum capitalization of P100 million. The PSE also requires a return on equity of 15% for each of the three years preceding a listing; the Singapore Exchange, by contrast, requires only a three-year operating record. Private placements with both foreign and domestic institutional investors remain popular, because they allow companies to avoid listing requirements and fees. [http://eb.eiu.com/index.asp?layout=oneclick&country\\_id=1610000161#16](http://eb.eiu.com/index.asp?layout=oneclick&country_id=1610000161#16)

There is a need towards a unified financial regulator (Aquino, 2004). However, there are two developments that impinge on the regulation of financial markets:

1. globalization of banking and financial markets which led to the enactment of Basle Capital Accord (Braithwaited and Drahos, 2000)
2. blurring boundaries between basic areas of finance such as banking and insurance

The unified financial sector regulation refers to the establishment of a single supervisor for the entire financial sector, or by centralizing in one agency the powers to supervise at least two of the main financial intermediaries such as banking with insurance, banking with securities, or securities with insurance (Bautista, 2004, Aquino, 2004)

## **2.4. Philippine Insurance Industry**

### **2.4.1. Liberalization of insurance markets**

The insurance industry was liberalized in October 24, 1994 under Department Order No. 100-94. The order contained the guidelines on entry of foreign insurance or reinsurance companies or intermediaries in the Philippines. The guidelines include the mode of entry, basis of selection and capital requirements depending on the equity percentage of foreign investments including qualification of applicant firms. (Manila Bulletin, April 2000; Department Order No. 100-94).

There are two types of insurance companies in the Philippines: life insurers and general, or non-life, insurers. Life insurance companies are major investors in equity shares, government securities, bonds and real estate.

Most of the foreign-owned life insurers gained permission to operate in the Philippines after the 1994 liberalization of the insurance industry. The latest foreign entrant, a US company, New York Life Insurance, established a wholly owned Philippine subsidiary in August 2001. The sole foreign life insurer with a composite licenses (composite insurers handle both general property/casualty business and life/annuity business) is Philam. Mapfre Asian Insurance Corporation, the local subsidiary of a Spanish firm, Mapfre, had a composite licence, but in January 2003 the company sold its life insurance portfolio to New York Life Insurance. <http://eb.eiu.com/index.asp> Retrieved Date: February 7, 2005.

In October 2003 there were 31 life insurance firms licensed to operate in the Philippines: 22 domestic and nine foreign-owned but domestically incorporated, and three domestic and one foreign-owned composite insurers involved in both life and non-life business. The Philippines is the least capitalized insurance market in South-east Asia because of reluctance on the part of mostly family-controlled firms to take in new partners who would infuse additional capital.

The Philippines liberated its insurance industry but there was a restriction on the opening of new domestic and foreign insurance companies had been in place since 1996.(Abraham,S., Babanto,J., Jao,D., Kuon,M., Pabayos,G. 2004). However in the case of Philam, Sun Life and Manulife (along with CMG Life of Australia, which Manulife acquired in October 2002) were established in the Philippines several decades before limits on foreign ownership were imposed in the 1960s. ([http://eb.eiu.com/index.asp?layout=oneclick&country\\_id=1610000161#16](http://eb.eiu.com/index.asp?layout=oneclick&country_id=1610000161#16)).

However, the condition given by the government then was to attract only the top 5 companies in their country of origin. Based on actual figures, those who established their presence here: Metropolitan Life or Metlife (decided to withdraw and sold its business to Manulife), New York Life, Prudential Life incorporated locally as Prumerica, Aetna (later absorbed by ING Life then was sold to Prulife of UK, Berkley Life (started as life insurance then decided to concentrate on pre-need products like Pension and Education plans), John Hancock (business absorbed by Manulife only this year), to name a few. As one can see, more than five came in but later folded up because of stiff competition. The capital required then was about 250M pesos of about 5M US dollar. (Insurance interviewee, 2004).

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subsidiary of a Spanish firm, Mapfre, had a composite licence, but in January 2003 the company sold its life insurance portfolio to New York Life Insurance. ([http://eb.eiu.com/index.asp?layout=oneclick&country\\_id=1610000161#16](http://eb.eiu.com/index.asp?layout=oneclick&country_id=1610000161#16)).

Foreign firms are now allowed to own equity stakes of up to 100% in insurers and may enter either by setting up local subsidiaries or branches or by entering into joint ventures with local partners. (Abraham,S., Babanto,J., Jao,D., Kuon,M., Pabayos,G. 2004).

The entry of more players into the insurance field has increased competition. The biggest companies are the ones that have been in the Philippines the longest, and they have benefited because size seems to be a critical factor in navigating the local market. Tough operating conditions have forced several foreign players to retreat from the market since 2001. Industry analysts predict that more foreign insurers will exit the market in the next few years to focus on more lucrative prospects in China and India.

Table 10  
Number of Insurance companies

| Year | Insurance companies |
|------|---------------------|
| 1995 | 129                 |
| 1996 | 134                 |
| 1997 | 145                 |
| 1998 | 148                 |
| 1999 | 153                 |
| 2000 | 155                 |
| 2001 | 150                 |
| 2002 | 149                 |
| 2003 | 140                 |
| 2004 | 188                 |

Source: ([www.ic.gov.ph](http://www.ic.gov.ph); Retrieved date: December 10, 2004; Abraham, Babanto, Jao, Kuon, Pabayos, 2004; Santos, 2004).

According to the Insurance Commission, there is an average of 150 insurance companies functioning within the country every year from 1995 to 2004.

Earlier there were American insurance companies doing business in the Philippines. However, because of the economic difficulties here, some of them folded up

or merged with other insurance companies as discussed earlier. Also, the effect of the 9/11 event is that the cost of reinsurance is higher. There would be more difficulty for small capitalized local players to compete with the largely capitalized foreign players. What the local players are doing now is to do business among its Asian counterparts since it is easier and more profitable. (Insurance interviewee, 2004).

Milo (2003) presented a preliminary review of the state of competition in the insurance industry of selected ASEAN5 economies, Indonesia, Malaysia, Philippines, Singapore and Thailand. The study surveyed how competition has been affected by the market structure and the regulatory regime in the insurance industries of the ASEAN5 economies. The paper's Policy Notes concluded that the industry is still relatively underdeveloped and untapped in fostering the development of regional capital markets. The paper also discussed the role of government regulations in engendering its growth and development.

For the non-life insurance companies, Table presents its market structure. This is predominantly domestic companies.

Both the life and non life insurance industry has seen the entry of new players and has tightened competition. Firm size of the company has contributed to their continued existence in the local market. Tough operating conditions have forced several foreign players to retreat from the market since 2001. Industry analysts predict that more foreign insurers will exit the market in the next few years to focus on more lucrative prospects in China and India. ([http://eb.eiu.com/index.asp?layout=oneclick&country\\_id=1610000161#16](http://eb.eiu.com/index.asp?layout=oneclick&country_id=1610000161#16))

Table 11  
Market Structure

| PRIVATE NON-LIFE INSURANCE COMPANIES WITH CERTIFICATE OF AUTHORITY |      |      |      |      |
|--|------|------|------|------|
|  | 2000 | 2001 | 2002 | 2003 |
| Domestic   | 99   | 96   | 89   | 91   |
| Foreign (a)  | 11   | 11   | 10   | 9    |
| Composite (b)  | 3    | 2    | 3    | 2    |
| Professional Reinsurer (c)   | 3    | 3    | 3    | 3    |
| Total  | 116  | 113  | 105  | 105  |

(a) Four (4) are domestically incorporated and five (5) are Branches.

(b) One (1) is a domestically incorporated Foreign company.

(c) All are Domestic companies

To date all the companies that are given license have complied with the paid up capital requirement of at least P50 million under Department of Finance Order No. 31-01.

Adding the Government Service Insurance System (GSIS) and the Philippine Crop Insurance Corporation (PCIC) which by their charters were established to transact non-life insurance, to date there are 107 companies transacting non-life insurance in the Philippines

The Philippine insurance industry is hampered by some internal problems. These are: the relatively small retention capacity due to the low capital paid up which makes the industry highly dependent on international reinsurance support; the industry is influenced by the reinsurance market situation; the industry is dependent on the level of economic activity so that when there is a slow down in business and construction, the demand for insurance is stunted; the perennial problem of being over-taxed the disadvantage when competing with insurers operating in other countries due to the high taxes imposed; need to police their ranks.

Although there is already liberalization in insurance, the industry still can still further developed as evidenced by Milo (2003) study. The FTA can look at other terms such as "assurance" or maybe "risk management" (although risk management is a broad term which can include management of financial risks (derivatives included) and credit

risks such as those faced by banks. Most insurance brokers now name their companies as "risk management services" companies.

Also, bancassurance is a relatively new field in Asia. Bancassurance involves the distribution of insurance products/ services via banks and other financial institutions and vice versa (e.g. banking products distributed or sold as an adjunct product of insurance/ insurance companies). Bancassurance in its simplest form is the distribution of insurance products through a bank's distribution channels. In concrete terms bancassurance, which is also known as Allfinanz - describes a package of financial services that can fulfill both banking and insurance needs at the same time. (<http://www.einsuranceprofessional.com/index.htm>).. For banks it is a means of product diversification and a source of additional fee income. Insurance companies see bancassurance as a tool for increasing their market penetration and premium turnover. The customer sees bancassurance as a bonanza in terms of reduced price, high quality product and delivery at doorsteps. (<http://www.einsuranceprofessional.com/index.htm>.)

In the Philippines, all the top ten banks, are involved in bancassurance. Bancassurance requires a different discipline and line of study as against a purely banking field or purely insurance field. This clearly shows how financial products are evolving to meet the requirements of the client. Most noteworthy are the following tie-ups, Philam and Equitable Bank forming Philam Equitable, Philam and Security Bank (Philam Security), and New York Life and Allied Bank. BPI has Ayala Life as partner, PNB has Beneficial Life, Banco de Oro has Generali Pilipinas, Metrobank has Axa Life, UCPB has Cocolife, among others. (Insurance practitioner interviewee, September 2004). Among the conditions is for the bank to gain at least 10% of the common/preferred stock of the insurer (insurance company) which is being questioned by an insurer which has a capital twice or more than the commercial/universal bank." (Insurance practitioner interviewee, September 2004).

Bancassurance is likewise in its infancy. The Bangko Sentral ng Pilipinas (Central Bank) have just released the guidelines that will govern banks in the sale of insurance products of their insurance company subsidiaries/affiliates

Table 11 shows that among the most active funds in terms of volume, are the funds managed by the insurance companies, indicating that public acceptance of these foreign currency denominated funds, is high. This should provide a good indicator to GSIS and SSS of investor preference. Even banks are wary of the competition provided by these funds to the banks' own unit funds or common trust funds. (Banker interviewee, 2004).

The SSS and GSIS can invest in foreign mutual funds, foreign deposits per RA 8282 and RA 8291. GSIS can offer US dollar insurance policy but not SSS. The US dollar insurance business is now a multi-million-peso business. Axa life, Sunlife, Insular life, Pru life have raked in millions of their single pay 10-year endowment insurance plan. However, there is slowing down of sales, because yields on USD ROP bonds have fallen causing insurance premiums to go up. The higher the yields on bonds, the



cheaper the cost of insurance. All private companies have to register their plans with the Insurance Commission. (Insurance practitioner, 2004).

### **3 Bilateral Flows between the United States of America and Philippines**

#### **3.1. On Trade Transactions**

In any bilateral arrangement, both countries become significant investor in the other that highlights set of economic commitments to the agreement. Among those that are of utmost interest to each party is their commitment to foreign investment that allow openness to trade in services, thereby providing a strong potential investment for its constituents. In fact, the country must exercise this in the light of national treatment, most-favored nation, market access, mode of supply clauses and etc.

Article XIX on negotiation of specific commitment provides that, “...any negotiation shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view of promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.”  
[http://www.wto.org/english/docs\\_e/legal\\_e/articleV](http://www.wto.org/english/docs_e/legal_e/articleV)

To date, the country had achieved considerable progress in various areas and continued with further harmonization measures. With regards to administrative capacity, it is continuing its stance with the upgrading of the existing financial infrastructure, particularly the many laws implemented on the bank operations. Over the past years, there has been progress in adopting legislation in key areas of foreign exchange, capital adequacy, corporate governance and general banking operations. Although new legislations have been adopted, further efforts are still needed, particularly, in the field of capital adequacy, operational transparency, market discipline and in enhancing administrative capacity, that of the regulator’s perspective.

Philippines and U.S. are trading partners to each other, The latter is the biggest recipient of the Philippine exports. Shown below is an 11-year U.S. trade balances with the three countries, namely, Philippines, Chile and Singapore. This is hope that it will shed light in considering any trading arrangement with the United States of America; be it beneficial or not for the Philippines and the United States to enter into a bilateral agreement.

Table 12

U.S. Trade Balances with Philippines, Chile and Singapore for the Period  
1994-2004 (in million USD)

| Year | PHILIPPINES |           |           | CHILE    |          |           | SINGAPORE |           |           |
|------|-------------|-----------|-----------|----------|----------|-----------|-----------|-----------|-----------|
|      | Exports     | Imports   | Balance   | Exports  | Imports  | Balance   | Exports   | Imports   | Balance   |
| 2004 | 6,628.90    | 8,444.40  | -1,815.50 | 3,261.60 | 4,164.60 | -902.9    | 18,183.90 | 14,128.20 | 4,055.70  |
| 2003 | 7,987.30    | 10,059.00 | -2,071.70 | 2,715.00 | 3,705.40 | -990.4    | 16,560.20 | 15,137.70 | 1,422.40  |
| 2002 | 7,276.10    | 10,979.80 | -3,703.70 | 2,608.80 | 3,784.50 | -1,175.70 | 16,217.80 | 14,802.30 | 1,415.50  |
| 2001 | 7,660.00    | 11,325.50 | -3,665.50 | 3,118.30 | 3,495.20 | -376.9    | 17,651.80 | 15,000.00 | 2,651.80  |
| 2000 | 8,799.10    | 13,934.60 | -5,135.50 | 3,460.50 | 3,269.00 | 191.5     | 17,806.30 | 19,178.30 | -1,372.00 |
| 1999 | 7,222.20    | 12,352.90 | -5,130.70 | 3,078.30 | 2,953.30 | 125       | 16,247.30 | 18,191.30 | -1,944.00 |
| 1998 | 6,736.50    | 11,947.30 | -5,210.80 | 3,979.40 | 2,452.50 | 1,526.90  | 15,693.70 | 18,355.80 | -2,662.10 |
| 1997 | 7,417.40    | 10,444.90 | -3,027.50 | 4,368.50 | 2,293.30 | 2,075.20  | 17,696.20 | 20,074.60 | -2,378.40 |
| 1996 | 6,142.40    | 8,161.40  | -2,019.00 | 4,139.50 | 2,262.20 | 1,877.30  | 16,720.00 | 20,343.10 | -3,623.10 |
| 1995 | 5,294.80    | 7,006.50  | -1,711.70 | 3,614.70 | 1,930.80 | 1,683.90  | 15,333.00 | 18,560.40 | -3,227.40 |
| 1994 | 3,886.10    | 5,719.00  | -1,832.90 | 2,773.80 | 1,820.40 | 953.4     | 13,019.90 | 15,357.70 | -2,337.80 |

[http://www.census.gov/foreign-trade/PressRelease/current\\_press\\_release/press.html](http://www.census.gov/foreign-trade/PressRelease/current_press_release/press.html). Retrieved Date: January 27, 2005

As depicted in Table 12, Singapore exhibits the highest trade balance among the three countries listed above. Its exports and imports trade data are improving over the years that can probably be attributed to the benefits derived from the bipartisan trade agreement. While U.S. entered into an FTA with Chile, it reflected a trade deficit, particularly in 2002, when the FTA was established.

To date, Singapore is considered as the 12<sup>th</sup> largest trading partner of the United States while Chile only ranks 36<sup>th</sup>. It was believed that FTA would further enhance the already strong and thriving commercial relationship for both countries. While it was reported that the United States incurred significant losses from its trade since 1998-2003 (prior to the free trade agreement), the government believes that an FTA with Chile will provide various economic benefits such as market access, treatment, prices and protection. <http://www.scoop.co.nz/mason/stories/WO0306/S00265.htm> Retrieved Date: January 27, 2005.

Compared to Chile, Philippines is competitive as far as trade transactions are concerned. It has more imports and export trade transactions for the 11-year period (1994-2004). The United States has more imports transactions in the Philippines than what it can export. This is a positive signal on the part of the latter as there is a greater need for a free-trade agreement. Although, the benefits that could be derived from the liberalization of foreign bank entry cannot be reflected in this data. However, the analysis of financial data on the entry of foreign bank reveals that there is room for the Philippines to enter into a free-trade agreement on financial services with the United States of America.

For the two separately concluded free trade agreements by the United States of America with Singapore and Chile, the financial services chapter is applied to measures adopted or maintained by the two countries. So far, there is an incentive for both countries, namely, US-Singapore and US-Chile to enter into an agreement. The liberalization in the banking sector and the benefits provided by Singapore and Chile either to the financial institutions, investors and other U.S. service providers far outweighed the benefits that the latter can provide. Full liberalization of the banking business and the provision for cross-border trade were eminent in the agreement entered into by these countries. They can be considered as less restrictive unlike the other regional trading arrangements entered into by countries, particularly with regard to the commercial presence.

More specifically, what are the implications of a possible US-RP Free Trade Agreement on the financial services? What value can be added to the existing regional trading arrangements and existing bilateral agreements with other countries? Will Philippines commit itself to a more liberal arrangement than the existing ones?

### **3.2. Flows of Financial Services in the Banking Industry**

The World Trade Organization (WTO) provides three pillars of liberalization, namely, national treatment and market access, removal of non-discriminatory structural barriers, and freedom of capital movements. [http://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_01\\_e.htm#articleV](http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm#articleV) Retrieval Date: December 14, 2004.

With regard to the liberalization of financial services, it mainly dealt with Pillar 1 where most economies to an RTA sometimes find it restrictive. If there is liberalization that one can speak of, it involves certain limitations that only send a signal of protectionism due to national interests. For Pillar 2, it is still undergoing several improvements and will hopefully be addressed more significantly. With regards to capital movement, which serves as the third Pillar of liberalization, the IMF strictly monitors the same as far as international capital transactions are concerned.

WTO (1997) initiated a study among member countries before the final Doha Agreement was concluded in 1997, where most governments made commitments to financial services compared to other service commitments included in the GATS, except tourism. Among the limitations that were highlighted in the study dealt with market access and national treatment issues. From the sectoral study that was undertaken, it showed that governments preferred commercial presence than cross-border supply. Hence, its study exhibited varying responses among member countries.

This goes back to the initial comments made in the preceding sections where the financial services sector is a critical component of a nation's economy. Any wrong decision that will be made by any government that will undermine the industry will have

a domino effect on the other industries or companies, as it provides a crucial infrastructure for other service-dependent industries of a country. Distortion within the system is a very risky undertaking.

Shown in the succeeding pages are the flows of financial services between the United States of America and the Philippines on banking services.

Table 13

Distribution of Foreign Banks Allowed by the Philippine Government to Operate in the Philippine Banking Industry by Type of License and Geographical Area

|               | <b>Foreign Bank Branches</b> | <b>Foreign Bank Subsidiaries</b> | <b>Offshore Banking Units</b> | <b>Total</b> |
|---------------|------------------------------|----------------------------------|-------------------------------|--------------|
| United States | 3                            | 0                                | 3                             | 6            |
| Asia Pacific  | 8                            | 4                                | 2                             | 14           |
| Europe        | 3                            | 0                                | 5                             | 8            |
| Canada        | 0                            | 0                                | 1                             | 1            |
| Total         | 13                           | 5                                | 11                            | 29           |

Source: BSP Factbook

Table 13 lists the number foreign banks that were allowed by the Philippine government to operate in the Philippines. Of the 14 banks that were allowed to operate in the country to set-up foreign bank branches, three (3) banks were granted full banking licenses to operate as a commercial bank, namely, Citibank, NA, Bank of America and JP Morgan Chase Bank. An analysis of these banks reveals that except for JP Morgan Chase Bank, the two (2) banks had been operating as a foreign bank branch in the Philippines before 1948.

On the other hand, out of the 18 foreign banks branches and subsidiaries allowed by the Philippines to operate in the country, eight (8) and four (4) are from Asia, respectively. Aside from these, there are a total of 11 banks that were allowed to operate as Offshore Banking Units. Of these totals, three (3) are from USA while no US bank operated as foreign bank subsidiaries from the current 5 institutions that are allowed under the Foreign Bank Liberalization Act.

A question remains unresolved if these foreign banks have contributed to the improvement of the local banking system. Is there a need to increase their presence or expand the services allowed for these foreign banks to be directly competitive with the local banks? As cited in the preceding discussions on foreign bank entry, both foreign banks and local banks benefited from the foreign bank deregulation; however, the former reaped more of the advantages compared to the local commercial banks. Hence, the small gap in the ratios that were generated from the operating results of the banks can be

attributed to domestic commercial banks that performed slightly lower compared to domestic banks with expanded commercial bank licenses.

Table 14

BSP-Registered Foreign Portfolio Investments in the Financial Services Sector  
For the Period 1996-2003

| Year | Banks    | Others   | Total    |
|------|----------|----------|----------|
| 1996 | 1,641.86 | 1,945.83 | 3,587.69 |
| 1997 | 1,741.48 | 1,326.82 | 3,069.30 |
| 1998 | 564.98   | 600.52   | 1,165.50 |
| 1999 | 1,222.8  | 766.79   | 1,989.58 |
| 2000 | 533.60   | 313.41   | 847.01   |
| 2001 | 124.66   | 137.42   | 262.08   |
| 2002 | 221.87   | 119.91   | 341.78   |
| 2003 | 140.52   | 167.67   | 308.19   |

Source: BSP Factbook 2003

Table 14 provides the Foreign Portfolio Investments made in the Financial Sector Industry from 1996-2003. It shows that prior to the Asian Financial Crisis, Foreign Portfolio Investments in both banking and other financial services sectors are high. Immediately after the crisis, portfolio investments were abruptly decreasing for both sectors probably due to the perceived political and economic risks in the country.

The results are quite frustrating as Philippines is losing its popularity in the investment field not only because foreign investors do not find the investments in this market or sector very attractive but probably because of the political instability brought about by insurgency and the perceived weak government. The fact that they are pulling out their investment in the financial services sector means a lot as people perceive banking and other financial services as being risky. In fact, in an Investment Climate Statement made by the US Department of State, it shows that the Philippines' competitiveness in attracting investments has deteriorated. Among the most pronounced statements are: <http://www.state.gov/e/eb/afd/2005/42102.htm> Retrieval Date: June 11, 2005

The increasing U.S. commercial familiarity with other Southeast Asian economies - most notably China and Vietnam - has eliminated some of the unique commercial ties that the Philippines once enjoyed with the United States. High levels of corruption; failure to reform the judicial system; ineffective protection of intellectual property rights; the slow pace of energy sector reform, price liberalization, and privatization; delays in passing key economic and fiscal reform legislation; and political uncertainties surrounding the May 2004 election

combined to constrain the Government's ability to attract foreign direct investments over the past year.

A self-proclaimed fiscal crisis in August 2004 also gave rise to concerns over the country's economic stability.

Unless the government has the political will to correct this problem, it will soon lose its competitiveness in the international arena, particularly among its neighboring countries.

Table 15

Distribution of Overseas Offices of Commercial Banks by  
Type of Bank License and Geographical Location

|                     | <b>Branches</b> | <b>Agency</b> | <b>Representative Office</b> |
|---------------------|-----------------|---------------|------------------------------|
| United States       | 6               | 1             | 0                            |
| Middle East         | 1               | 0             | 2                            |
| Asia Pacific Region | 9               | 0             | 14                           |
| Europe              | 1               | 0             | 12                           |
| <b>Total</b>        | <b>17</b>       | <b>1</b>      | <b>28</b>                    |

Source: BSP Factbook

To date, there are a total of 17 branches of commercial banks, 1 agency office, 28 representative offices and 3 government offices of Philippine Banks that are strategically located abroad. Some are located in Europe like Madrid, Amsterdam, Rome, Paris, Athens, while others are located in the United States, Australia, Southeast Asia and Asia Pacific Rim.

BSP Factbook (2002) reveals that there are six domestic branches of local commercial banks that were allowed by the United States government to establish a branch. These branches are operated by three (3) universal banks, namely, Allied Banking Corporation with branch in Guam, Metropolitan Bank and Trust Co. with two branches located in New York and one branch in Guam, and Philippine National Bank with operations in Los Angeles and New York, respectively. What is notable in these offshore branches is that they have been operating for several decades already except for the one that was opened by Metropolitan Bank in New York in 1991, which served as the second branch.

On the other hand, majority of the foreign branches established abroad are located in the Asia Pacific Region such as China, Hongkong, Taiwan, Singapore and South Korea. Aside from this, PNB was also able to establish an agency office in Hawaii, USA. While the United States is the biggest trading partner of the Philippines, local banks do

not have representative offices located in the US. Most of these representative offices are located in the Europe and Asia Pacific Region. The data only reveals limited presence and access by the Philippine banks in the United States in tapping the local market or OFWs and Filipino migrants. Considering the less stringent requirements to establish a representative office compared to the establishment of a branch or agency, the question still remains unanswered why there is no single representative office of a commercial bank located in the United States.

An analysis of the data available from BSP reveals that of the 21 domestic banks operating as commercial banks, both with regular and expanded licenses, only 6 banks have expanded their operations abroad. Other banks either have not tried tapping the market abroad or were not granted the license to operate. This entail high cost on the part of the bank as people had to be deployed abroad and other operating costs had to be considered too.

### **3.3. Flows of Financial Services in the Stock Market Industry**

At present, there are one hundred eighty four (184) trading participants, of which, thirty-three (33) are of foreign origin. There are only two American foreign trading participants -- Citicorp Securities International (RP), Inc. and JP Morgan Securities Philippines, Inc. In the PSE Broker's Report as of December 2004, Citicorp Securities International (RP) is ranked 140 of the and JP Morgan Securities of the Philippines ranked 156. There are no transactions for both trading participants since they have a voluntary suspension status. (PSE, 2005).

Table 16

## Foreign Buying/selling statistics

|                 |                              |   |
|-----------------|------------------------------|---|
| Notations Used: |                              |   |
| B = billion     |                              |   |
| M = million     |                              |   |
|                 |                              |   |
| Date            | Net Foreign Buying (Selling) |   |
| Feb-00          | (4.590)                      | B |
| Mar-00          | -                            |   |
| Apr-00          | -                            |   |
| May-00          | -                            |   |
| Jun-00          | -                            |   |
| Jul-00          | -                            |   |
| Aug-00          | -                            |   |
| Sep-00          | -                            |   |
| Oct-00          | 0.440                        | B |
| Nov-00          | 3.000                        | B |
| Dec-00          | 2.900                        | B |
| Jan-01          | 0.390                        | B |
| Feb-01          | -                            |   |
| Mar-01          | (17.690)                     | B |
| Apr-01          | 346.970                      | B |
| May-01          | 258.970                      | B |
| Jun-01          | 2.990                        | B |
| Jul-01          | 181.530                      | B |
| Aug-01          | (446.130)                    | B |
| Sep-01          | 180.620                      | M |
| Oct-01          | (561.450)                    | M |
| Nov-01          | (990.340)                    | M |
| Dec-01          | 46.350                       | M |
| Jan-02          | 1.700                        | B |
| Feb-02          | 432.830                      | M |
| Mar-02          | 875.870                      | M |
| Apr-02          | (668.470)                    | M |
| May-02          | (727.230)                    | M |
| Jun-02          | (348.170)                    | M |
| Jul-02          | (443.970)                    | M |
| Aug-02          | (486.770)                    | M |



|        |           |   |
|--------|-----------|---|
| Sep-02 | (25.740)  | M |
| Oct-02 | (1.110)   | B |
| Nov-02 | (392.360) | M |
| Dec-02 | (683.550) | M |
| Jan-03 | 171.920   | M |
| Feb-03 | (183.520) | M |
| Mar-03 | (43.480)  | M |
| Apr-03 | 15.420    | M |
| May-03 | 126.760   | M |
| Jun-03 | 2.060     | B |
| Jul-03 | 1.510     | B |
| Aug-03 | 916.480   | M |
| Sep-03 | 956.000   | M |
| Oct-03 | -         |   |
| Nov-03 | 77.295    | M |
| Dec-03 | 88.480    | M |
| Jan-04 | 940.330   | M |
| Feb-04 | 19.060    | M |
| Mar-04 | 147.900   | M |
| Apr-04 | 1.610     | B |
| May-04 | 186.910   | M |
| Jun-04 | 1.820     | B |
| Jul-04 | 447.020   | M |
| Aug-04 | 542.560   | M |
| Sep-04 | 2.390     | B |
| Oct-04 | 4.220     | B |
| Nov-04 | 4.900     | B |
| Dec-04 | 836.580   | M |
| Jan-05 | 10.670    | B |
| Feb-05 | 3.070     | B |

Source: Philippine Stock Exchange

The researchers compiled data from the Philippine Stock Exchange Monthly Review. Some months have too tiny trading (around hundred millions only) that the PSE Monthly Review that it didn't report the net foreign investment. There is also no breakdown how much foreign buying or selling is coming from American funds to the Philippine equities market.

Of the thirty-three, only nine foreign trading participants are active. The rest have filed for voluntary suspension, ceased operations, inactive or involuntary suspension. The reason why they choose to become inactive is because of the lethargic bourse that we have. There is a need for fiscal reforms to control the bulging budget deficit, solution in the Mindanao conflict and economic growth. The moment there is political unrest in the country, foreign funds sell out.

It is of interest to discuss how the United States' largest pension fund California Public Employees' Retirement System (CALPERS) affected the Philippine Stock Market. First in 2002, when there were rumors of supposed withdrawal of about US\$400 million worth of investments in the Philippines, Malaysia, Thailand and Indonesia became a cause of concern among investors. (PSE Fact Book 2003).

In February 2005, there was another concern of a possible withdrawal of CALPERS from the Philippines. However, CALPERS has retained the Philippines in its list of permissible emerging markets. CALPERS's consulting firm Wilshire Associates gave the Philippines a passing score of 2.0 compared to 2.12 last year. CALPERS has a threshold score of 2.0 for permissible investment sites. It has an estimated \$85 million dollars worth of portfolio investment in the Philippines. ([www.abs-cbnnews.com](http://www.abs-cbnnews.com) Retrieved date February 7, 2005)

Talk of a possible removal of the Philippines from CALPERS' list of permissible investment sites arose after the country suffered a credit rating downgrade by Standard and Poor's early this month to BB- from BB, in view of lingering problems with the budget deficit and public debt. ([www.abs-cbnnews.com](http://www.abs-cbnnews.com), Retrieved date February 7, 2005)

The Philippine capital market lacks the depth and liquidity observed in the more developed capital markets in the world. In terms of depth, the array of products offered is limited in great part to bonds and equities. Hybrid securities are limited. The country has no options exchange. Liquidity is another aspect the country has to address. The Philippine Stock Exchange volume turnover is roughly US\$2.6 billion and the bond market US\$50million. (Santos, et al 2004).

The PSE has offered warrants as a form of derivatives but still the offerings of products remain wanting. There is a need for financial engineering where products are developed or innovated to answer the risk appetite of investors.

### **3.4. Flows of Financial Services in the Insurance Industry**

The largest life insurance companies in terms of assets are Philippine American Life and General Insurance (Philam, a locally incorporated but wholly owned subsidiary of the US-based American International Group); Sun Life of Canada; the Philippine firms, Insular Life and Ayala Life; and Manufacturers Life (Manulife of Canada). The three largest—Philam, Sun Life and Insular—alone control almost 75% of the life insurance market. Most insurance companies have come in and have left. (<http://eb.eiu.com/index.asp> Retrieved Date: February 7, 2005).

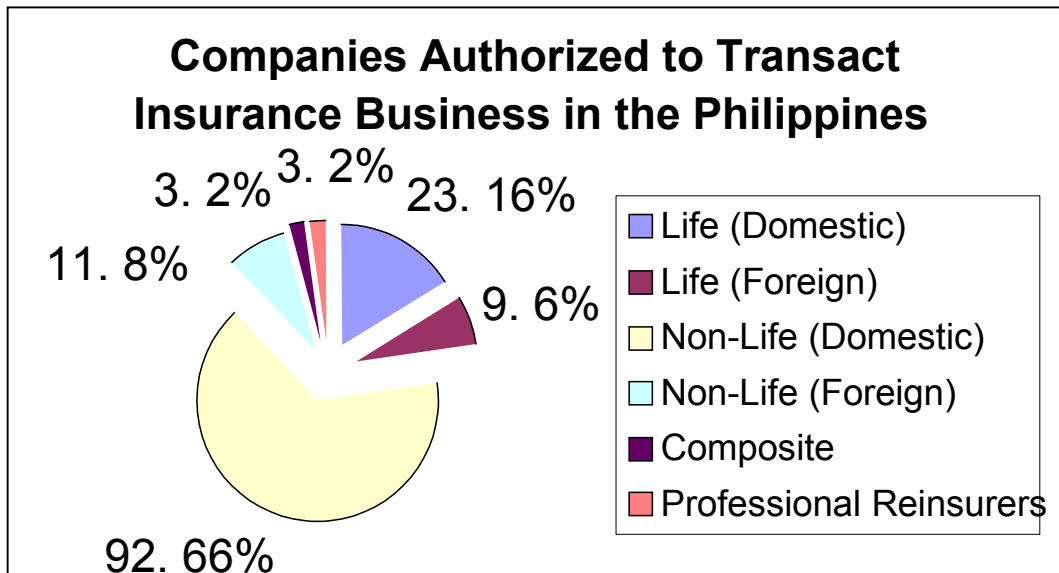
Table 17

Top ten life insurance companies, end-2002

| Company  | Assets (bn) | (P Market share (%) |
|--|-------------|---------------------|
| Philippine American Life and General Insurance (AIG of the US) | 56.3        | 33.1                |
| Sun Life of Canada   | 35.5        | 20.8                |
| Insular Life   | 30.2        | 17.7                |
| Ayala Life   | 6.8         | 4.0                 |
| Manufacturers Life (Canada)                                    | 6.8         | 4.0                 |
| Philippine AXA Life  | 4.6         | 2.7                 |
| United Coconut Planters Life Assurance                         | 3.3         | 1.9                 |
| CMG Life (Australia)   | 3.2         | 1.9                 |
| National Life Assurance  | 3.0         | 1.8                 |
| Great Pacific Life Assurance                                   | 3.0         | 1.7                 |
| Total market   | 170.3       | 100.0               |

Source: Insurance Commission.

Figure 2 Companies Authorized to Transact Insurance Business



Source: ([www.ic.gov.ph](http://www.ic.gov.ph); Retrieved date: December 10, 2004; Abraham, Babanto, Jao, Kuon, Pabayos, 2004).

## **INVESTMENTS**

The combined investment portfolio of the country's insurers showed an increase of P14.66 billion from P124.29 billion in 1999 to P138.95 billion in 2000, posting a growth rate of 11.79%.

Most of the additional funds came from the life sector, particularly that of the new foreign insurers that entered the market.

Among the different categories of investments in the market, the life and non-life sector invested more on bonds with P47.57 billion and P6.40 billion respectively.

| Table 18 Investments by Category, 2000 |       |       |        |          |      |       |                  |      |       |             |                  |
|--|-------|-------|--------|----------|------|-------|------------------|------|-------|-------------|------------------|
| Particulars                            | LIFE  |       |        | NON-LIFE |      |       | PROF. REINSURERS |      |       | GRAND TOTAL | Percentage Share |
|  | D     | F     | Total  | D        | F    | Total | D                | F    | Total | Amount (PB) |                  |
| Bonds                                  | 5.49  | 42.08 | 47.57  | 3.02     | 2.01 | 5.03  | 1.11             | 0.26 | 1.37  | 53.97       | 38.84            |
| Stocks                                 | 13.42 | 10.97 | 24.39  | 5.06     | 0.69 | 5.75  | 0.42             | -    | 0.42  | 30.56       | 21.99            |
| Real Estate                            | 10.05 | 2.9   | 12.95  | 3.09     | 0.04 | 3.13  | 0.2              | -    | 0.2   | 16.28       | 11.72            |
| Purchase Money                         | 0.34  | -     | 0.34   | -        | -    | -     | -                | -    | -     | 0.34        | 0.24             |
| Mortgage Loans                         | 2.46  | 2.15  | 4.61   | 0.26     | 0.04 | 0.3   | 0.04             | -    | 0.04  | 4.95        | 3.56             |
| Collateral Loans                       | 0.3   | -     | 0.3    | 0.01     | -    | 0.01  | -                | -    | -     | 0.31        | 0.22             |
| Guaranteed Loans                       | 0.91  | 3.21  | 4.12   | 0.19     | 0.04 | 0.23  | -                | -    | -     | 4.35        | 3.13             |
| Policy Loans                           | 3.21  | 6.41  | 9.62   | -        | -    | -     | -                | -    | -     | 9.62        | 6.92             |
| Other Loans                            | 0.24  | 0.25  | 0.49   | 0.14     | 0.03 | 0.17  | -                | -    | -     | 0.66        | 0.48             |
| Short-term                             | 0.55  | 1.92  | 2.47   | 3.08     | 0.49 | 3.57  | 0.14             | 0.01 | 0.15  | 6.19        | 4.46             |
| Other Investments                      | 0.94  | 0.222 | 1.16   | 0.37     | 0.05 | 0.42  | 0.05             | -    | 0.05  | 1.63        | 1.17             |
| Fixed Deposits                         | 2.95  | 1.42  | 4.37   | 4.45     | 0.75 | 5.2   | 0.25             | -    | 0.25  | 9.82        | 7.07             |
| Asset Backed Securities                | 0.15  | 0.07  | 0.22   | 0.05     | -    | 0.05  | -                | -    | -     | 0.27        | 0.2              |
| TOTAL                                  | 41.01 | 71.6  | 112.61 | 19.72    | 4.14 | 23.86 | 2.21             | 0.27 | 2.48  | 138.95      | 100              |

Note: D-Domestic  
F-Foreign

Table 19

## RP-US Economic Relations

|   | 1997      | 1998       | 1999       | 2000       |
|---|-----------|------------|------------|------------|
| <b>TRADE</b>  |           |            |            |            |
| Total Trade (In million US\$)                                   | 15,972.80 | 16,656.80  | 16,808.00  | 16,656.89  |
| Total Exports to the United States (In million US\$)            | 8,814     | 10,098     | 9,734      | 11,244.21  |
| Total imports from the United States (In million US\$)          | 7,158     | 6,559      | 5,824.19   | 5,014.96   |
| Trade Balance (In million US\$)                                 | 1,656     | 3,539      | 3,909.81   | 6,229.25   |
| <b>FDI</b>  |           |            |            |            |
| Total US FDI in RP (In thousand US\$)                           | 274,007   | 150,990    | 354,240    | 2,410a     |
| US Share of Total FDI in RP                                     | 13.81%    | 16.27%     | 65.36%     | 13.84      |
| <b>ODA</b>  |           |            |            |            |
| Total ODA (In million US\$)                                     | 15.00     | 27.33      | 72.69      | No data    |
| RP Share of Total US ODA Disbursements to the Rest of the World | 0.3%      | 0.5%       | 1.1%       | No data    |
| PL 480 – Title I (In US\$)                                      | 5,000,000 | 10,000,000 | 30,000,000 | 40,000,000 |
| USAID Pipeline (In million US\$)                                | No data   | 126.6      | 98.6       | 59.8       |
| USAID Assistance (In million US\$)                              | 53        | 49         | 39         | 35         |
| <b>TOURISM</b>  |           |            |            |            |
| Visitor Arrivals from the US                                    | 427,431   | No data    | 463,600    | 256,102b   |

a- BOI-Approved only. PEZA registered FDI for 2000 amounted to US\$ 6,055,900.

b- b- January – June only

Source: Backgrounder USA \_\_\_\_\_

A free trade existed between the Philippines and the United States until the 1930s. However, given the changing economies, there is a need to forge a new partnership

anchored on the enhanced Philippine capacity to tap trade and investment opportunities in a freely competitive international environment. The Philippine and American governments have promoted bilateral economic relations. This gave business to trade, commerce, and industry in the Philippines.

Table 19 shows the Philippines-United States of America Economic Relations. The total trade has grown in the four year period by 4.28%. The US share of total foreign direct investment in the Philippines has increased tremendously from 1998-1999. However, the share for year 2000 increased only by 13.84%.

Table 20 presents data on foreign direct equity investment of the United States of America to the Philippines for the period 1996-2003. It is noticeable that for the years 1999 and 2002, the percentage contribution of USA to TFEI is around 4%. However, the United States of America remains one of our top trading partners as evidenced in the other years.

Table 20

BSP-REGISTERED FOREIGN DIRECT EQUITY INVESTMENTS

| YEAR                 | USA         | Total Foreign Direct Equity Investments (TFEI) | Percentage Contribution of USA to TFEI |
|----------------------|-------------|--|--|
| 1996                 | 292.72      | 1281.00  | 22.85%                                 |
| 1997                 | 116.75      | 1053.38  | 11.08%                                 |
| 1998                 | 243.39      | 884.71   | 27.51%                                 |
| 1999                 | 84.42       | 2106.73  | 4.01%                                  |
| 2000                 | 245.32      | 1398.20  | 17.55%                                 |
| 2001                 | 192.80      | 857.87   | 22.47%                                 |
| 2002                 | 55.41       | 1431.42  | 3.87%                                  |
| 2003                 | 225.41      | 1488.18  | 15.15%                                 |
| Source: IOD- BSP     |             |  |  |
| Date Last Modified : | 04 Jan 2005 |  |  |

Table 20 presents FDI by Industry, financial and real estate contributed 2.65% to total FDI for year 2003. Table 20 shows an aggregate data for services, there were more imports for both financial and insurance services than exports, thus resulting into deficits.

However, in these tables, the total contribution of the US to FDI in the financial services sector has not been identified.

### **3.3.1. Free Trade Agreements of the United States of America with Chile and Singapore**

The United States of America entered into separate free trade agreements with Chile and Singapore. The first one that was entered into was the one with Chile in 2004, followed by FTA with Singapore in 2003.

It can be noted that the two successful bilateral trading arrangements undertaken by the United States of America were among the best as far as the rating of the financial system and the effectiveness of the regulatory body in the discharge of their own mandate is concerned.

Singapore has been regarded as Asia's number one service hub in the Southeast Asian Region, while known international ratings agency Moody's considered the Chilean banking system as Latin America's strongest financial system because of its prudent regulations and oversight systems. In fact, it had been compared to those of industrialized economies in the region. <http://www.hannover99.corp.cl/ingles/capital.htm>. Retrieved Date: January 4, 2005

#### **A. US-Chile Free Trade Agreement**

The same applies to Chile's banking system where the study conducted by Standard and Poor's considered the system as reliable, as having good asset quality and a proficient regulatory framework. It was noted that:

Duff & Phelps cites solvency and stability among Chilean strengths, and highlights the presence of highly-capitalized banks with a bad loan rate far below the regional average. Moody's regards the Chilean banking system as Latin America's strongest, noting prudent regulations and oversight systems comparable to those of industrialized economies.

The Chilean financial system is widely viewed as the continent's most competitive. A World Economic Forum (WEF) survey of 53 countries ranked it 20th overall. A study of 46 countries by the Institute for Management Development (IMD) gave it 24th place. <http://www.hannover99.corp.cl/ingles/capital.htm>

The following are the areas provided in the free trade agreement between Chile and the United States of America:

#### **Banking and Related Transactions:**



Establishment by U.S. banks and securities firms of branches and subsidiaries and may invest in local firms without restriction

U.S. financial institutions may tap privatized voluntary savings plans by offering services.

U.S. firms also gain some increased ability to offer such products through Chile's mandatory social security system.

Cross-border services in financial information and data processing, and financial advisory services with a limited exception.

Chilean mutual funds may use foreign-based portfolio managers.

### **Insurance:**

Under the FTA, U.S. insurance firms will be able to establish subsidiaries, branches or joint ventures

Singapore is expanding the cross-border insurance services it allows, and U.S. firms will be able to sell marine, aviation and transport (MAT) insurance, reinsurance, to provide insurance brokerage of reinsurance and MAT insurance, and to provide insurance auxiliary services.

A new principle of expedited availability of insurance services in the FTA means that prior regulatory product approval will not be required for all insurance products other than life insurance, Central Provident Fund related products, and investment-linked products sold to the business community. Expedited procedures will be available in other cases when prior product approval is necessary. The FTA specifies that U.S. financial institutions may offer financial services to citizens participating in Singapore's privatized social security system under more liberal requirements

### **Securities and Related Financial Services:**

The FTA specifies that U.S. firms may provide asset/portfolio management and securities services in Singapore through the establishment of a local office, or by acquisition of local firms.

In addition, U.S. firms may supply pension services under Singapore's privatized social security system, with liberalized requirements regarding the number of portfolio managers that must be located in Singapore. And U.S.-based firms may sell portfolio management services via a related institution in Singapore. Under the

FTA, Singapore will treat U.S. firms the same as local firms for the cross-border supply of financial information, advisory and data processing services.

## **B. US-Singapore Free Trade Agreement**

When the U.S. entered into an agreement with Singapore, some of the most flexible agreements were undertaken where Singapore fully liberalized the banking operations that allowed foreign banks to compete with domestic banks. The 18-month ban from the time of the FTA paved way to the U.S. banks to apply for full-service bank licenses and 3-year lifting of wholesale banking activities. Moreover, establishment of unlimited number of branches in various locations in Singapore were considered very favorable on the part of the United States government to tap Singapore Market.

In the case of the Singapore's banking industry, it was opined that more liberal rules allowing foreign entry also increases discipline among domestic banks. In October 1999, it allowed four (4) foreign banks to receive qualifying full banking privileges and several more received restricted bank licenses. This was made in line with other measures undertaken by the Monetary Authority of Singapore to increase competition, boost lending efficiencies and raise corporate governance scrutiny. It encouraged the merger among the 5 top banks into 3 banks in preparation for the foreign bank entry while segregating the financial and non-financial holdings of these banks. Moreover, it has also dropped restrictions on foreign bank branching and the establishments of ATM Centers.

[http://www.dfat.gov.au/publications/changing\\_corp\\_asia/chap16.pdf#search='Singapore's%20regulatory%20framework'](http://www.dfat.gov.au/publications/changing_corp_asia/chap16.pdf#search='Singapore's%20regulatory%20framework')

### **Banking**

The following were provided in the FTA in the Banking Services Sector:

Lifting of ban on new licenses for full-service banks or for "wholesale" banks that serve only large transactions.

Ability by licensed full-service banks to offer all their services in Singapore at up to 30 locations in the first year that the agreement is in effect, and at an unlimited number of locations within two years.

Application for access to the local Automated Teller Machine (ATM) network within two-and-a half years, and branches of U.S. banks get access to the ATM network in four years

### **Insurance:**

Under the FTA, U.S. insurance firms will be able to establish subsidiaries, branches or joint ventures

Singapore is expanding the cross-border insurance services it allows, and U.S. firms will be able to sell marine, aviation and transport (MAT) insurance, reinsurance, to provide insurance brokerage of reinsurance and MAT insurance, and to provide insurance auxiliary services.

A new principle of expedited availability of insurance services in the FTA means that prior regulatory product approval will not be required for all insurance products other than life insurance, Central Provident Fund related products, and investment-linked products sold to the business community. Expedited procedures will be available in other cases when prior product approval is necessary. The FTA specifies that U.S. financial institutions may offer financial services to citizens participating in Singapore's privatized social security system under more liberal requirements

#### **Securities and Related Financial Services:**

The FTA specifies that U.S. firms may provide asset/portfolio management and securities services in Singapore through the establishment of a local office, or by acquisition of local firms.

In addition, U.S. firms may supply pension services under Singapore's privatized social security system, with liberalized requirements regarding the number of portfolio managers that must be located in Singapore. And U.S.-based firms may sell portfolio management services via a related institution in Singapore. Under the FTA, Singapore will treat U.S. firms the same as local firms for the cross-border supply of financial information, advisory and data processing services.

The FTA entered into by the United States of America with these two countries paved way in strengthening the position of the United States in the international market and provided incentives to both parties in developing and strengthening the economic and political ties aimed at deepening trade and investment relationships.

What can the Philippines offer as far as the banking business in concerned? More appropriately, what benefits can be derived by the Philippines in entering into free trade agreement with US?

#### **4. Modes of Supply and Market Access in Financial services**

## **4.1. Modes of Supply in the Banking Industry**

The increasing transactions in the international commerce have created a demand for greater financial services. A financial service provider can use several channels to deliver services to the clients in a foreign country. These are embodied in the General Agreement on Trade in Services (GATS) that came into effect in January 1995. It set forth legally enforceable rules covering international trade in services, which calls for progressive liberalization that will be undertaken by a country through successive round of services trade negotiations. Shown below are 4 Modes of Supply that the Philippines and the United States of America's banking industry can consider.

### **4.1.1. Cross Border Supply**

It means a provision of financial service offered by a bank where the service crosses the border of the country of said provider. It does not necessarily require the movement of the clients to avail of the service. This requires the liberalization of inflows and outflows of capital that are essential part of the financial services provided by the bank. It is the most common mode of supply in trade in services, particularly in the field of financial services.

### **4.1.2. Consumption Abroad**

It refers to the provision of the banking service that involves or requires the movement of the consumer to the country of the supplier. While this mode of supply can be availed of by foreign investors or customers both in the Philippines and in the United States, will the Philippines be an attractive financial hub for foreign investments? The country can do so by expanding the financial services provided and the investment alternatives that can be made available for the consumers to choose from.

### **4.1.3. Commercial Presence**

The banking institution or financial service provider establishes an office or has presence of commercial facilities in the host country in order to render service related to its activities. This requires the liberalization of capital inflows that are related to the supply of the financial services provided by the foreign bank in another country that includes capital that will be required to establish branches, subsidiaries or to facilitate their operations.

#### **4.1.4. Movement of Natural Persons**

It refers to the persons that travel to the host country to provide service on a temporary basis. Officers or employees of foreign bank who wishes to render service in the host country are allowed subject to the laws of the host country. Aside from this, services provided by experts in the field of financial markets such as financial derivatives, securities and other investments can be availed to transfer technical knowledge to the people in the banking industry.

### **4.2. Market Access to Banking Services between the United States and the Philippines**

#### **4.2.1. Guidelines on Foreign Bank Operations in the United States**

A review of the U.S. laws on foreign bank operations reveals that there were improvements undertaken by the U.S. government in providing favorable business and financial environment to investors, whether individual or institutional investments or investments made by financial institutions in the U.S. territories. Shown below are some of its laws that are part of its commitment towards liberalization.

The United States of America allows foreign banks to enter in various modes. These modes of access and the banking activities that they can engage in are shown and discussed below:

- (1) Representative Office
- (2) Agencies
- (3) Branches
- (4) Bank Subsidiary
- (5) Edge Act and Agreement international Banking Corporations; and
- (6) Commercial lending companies

It must be noted that for the Philippine banks that intend to consider modes of entry 2 – 6, as shown above, they are subject to the nonbanking prohibitions of the BHC Act on their U.S. operations. [http://www.ffiec.gov/ffiecinfobase/resources/info\\_sec/frb12\\_cfr\\_211.24\\_uninsured\\_state\\_foreign\\_bank.pdf](http://www.ffiec.gov/ffiecinfobase/resources/info_sec/frb12_cfr_211.24_uninsured_state_foreign_bank.pdf) #search='Foreign%20Bank's%20Representative%20Office%20in%20the%20United%20States' Retrieval Date: January 5, 2005

#### **Representative Office**

For a Philippine bank that wishes to establish a representative office or offices in the United States, it is not subject to any restriction in the U.S. non-bank activities. This

is the easiest mode of entry as it is not allowed to engage in other banking activities. Among the permissible activities allowed by the U.S. government are representational and administrative functions in connection with the banking activities of the foreign bank, credit approvals under certain conditions, and perform other functions for or in behalf of the foreign bank or its affiliates. [http://www.shearman.com/documents/CF\\_1001a.pdf#search='Regulation%20K%20for%20Representative%20Offices%20in%20the%20United%20States'](http://www.shearman.com/documents/CF_1001a.pdf#search='Regulation%20K%20for%20Representative%20Offices%20in%20the%20United%20States') Retrieval Date: June 13, 2005

### **Agency**

It is a legal operational extension of its parent foreign bank and not a separately capitalized U.S. Corporation. A foreign bank may establish a branch only under either a Federal or State license only in a State whose laws do not prohibit such branches. They should be established with prior OCC or State approval or FED approval. For the two modes of entry, both are not subject to State reciprocity requirements.

### **Branches**

Except for branches that were established prior to 1991 and for retail deposits with initial amounts of \$100,000.00, deposits received by foreign bank branches are not insured with FDIC and are not subject to interstate branching restrictions.

### **Subsidiary**

It can only be established by obtaining a new charter or by acquiring the shares of an existing bank (25% or greater investment in a class of a bank's voting shares). The foreign parent company must seek the approval from the FED under the BHC Act. If the foreign bank seeks to charter a "de novo" bank, it must obtain additional approval from the OCC for a national bank charter or from a State authority for a State charter.

Those that do not qualify in the preceding provisions, may only acquire less than 25% of any class of the voting shares of a bank or U.S. bank holding company; however, it may not exercise control over the U.S. bank or bank holding company in making any such investments. If the investment that will be made exceeds 10%, it must file a prior Change-in-Bank-Control Act Notice with the bank's primary federal regulator.

### **Edge Act Agreement on International Banking Corporations**

Foreign banks and their affiliates may establish Edge Act Corporations in any State, regardless of where its parent bank's home State is located only with prior approval from the FED. Its operations are almost the same as those of wholesale banks, however, said activities must be incidental to foreign or international business.

### **Commercial lending companies**

Foreign banks may establish commercial lending companies with prior approval from the Superintendent of the New York State banking Department and the Fed. However, foreign banks may only be allowed to enter into this venture only if there were no other practicable means of entering the New York market. This clause is quite vague as the definition of practicable means was not disclosed.

It must be noted that each government agency or its instrumentalities has specific regulatory requirements that a foreign bank must comply. For a number of foreign banks, one of the critical issues that must be satisfied in obtaining Federal approval of a branch or agency application is the comprehensive supervision or regulation of their foreign activities on a consolidated basis in their home country. While there are geographic restrictions, depending upon the mode of entry, attempts to eliminate various disparities on national treatment among States were made by authorizing the OCC to license Federal branches and agencies of foreign banks.

With the issue regarding uninsured deposits, while gaining access to the deposit insurance system for initial deposits received amounting to \$100,000, a foreign bank, such as the Philippine banks, already lost competitive advantages over domestic banks in the U.S/ through branches or agencies. One of the advantages that foreign banks enjoyed prior to the establishment of the IBA in 1991 is their ability to retain their existing deposit taking offices in more than one State under the grandfather clause.

Aside from these, a specific requirement for capital equivalency of foreign banks was established which is equivalent but not identical to that of the U.S. banks. These are in line with the Basel Accord, hence, a higher minimum capital requirement may be imposed to support any perceived higher risk in an applicant's proposed activities.

Despite these limitations on mode of access and national treatment, the following are the laws that provided a more liberalized financial environment for the foreign banks with business presence in the United States of America:

**1. Riegle-Neil Interstate Banking and Branching Efficiency of 1994**

<http://www.federalreserve.gov/BOARDDOCS/PRESS/boardacts/1997/19970905/R-0962.pdf>

Retrieval Date: January 11, 2005

- A. The law provides foreign banks with national treatment in interstate banking and branching. It allows foreign banks to acquire U.S. bank subsidiaries in more than one state on the same basis as U.S. Bank holding companies.
- B. It gives foreign banks and their U.S. bank subsidiaries the same rights as the U.S. banks to establish "de novo" branches outside their home State and to establish interstate branches through mergers with banks in other States (no preferential treatment shall be given).

**2. Economic Growth and Regulatory Paperwork Reduction Act of 1996**

<http://www.egrpra.gov/Statute.pdf#search='Economic%20Growth%20and%20Regulatory%20Paperwork%20Reduction%20Act%20of%201996'> Retrieval Date: January 11, 2005

- A. This Act establishes a more streamlined and less intrusive regulatory framework for geographic and product expansion for well-capitalized banking organizations.
- B. Foreign banks' branches and agencies would not be subject to examination fees by the Fed, unless it charges fees for State-owned banks.

### **3. Comprehensive Revision on Fed's International Banking Regulation**

It focuses on the streamlining of the application process for foreign banks by implementing certain provisions in the Interstate Act and the 1996 Act and changing how qualifying foreign Banking Organization status is calculated to determine eligibility for certain overseas-based exemptions from the U.S. nonbanking restrictions cited earlier.

**4. Gramm-Leach Bliley Act of 1999** [http://en.wikipedia.org/wiki/Gramm-Leach-Bliley\\_Act](http://en.wikipedia.org/wiki/Gramm-Leach-Bliley_Act)  
Retrieval Date: January 11, 2005

It expands and rationalizes the various barriers to access for financial markets between the banking, securities, mutual fund and insurance industries that had already occurred through the years.

It allows financial holding companies to engage in full-range of financial activities where a company must elect a financial holding company status and ensure that its U.S. depository institution subsidiaries are and remain "well-capitalized and compliant to the Community Reinvestment Act (CRA) requirements. For the foreign banks, the laws may be quite different from the local banks in the U.S. depending on the nature of their banking operations in the U.S. The Act effectively removed the restrictions in combining commercial banking, securities underwriting and insurance in consolidated organizations.

The GBL seeks to restrict or limits the National treatment issue which is contrasted to the application of interstate rules where foreign banks were treated the same as the local banks, branches or subsidiaries.

The specific commitment by the United States of America in the free trade agreement entered separately with these two countries were spelled out in the headnotes and list of non-conforming measures on Financial Services Annex. It focused on four (4) major obligations pertaining to national treatment, most-favored nation treatment, market access and Senior Management and Board of Directors. [http://www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Singapore\\_FTA/Final\\_Texts/asset\\_upload\\_file238\\_4048.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Singapore_FTA/Final_Texts/asset_upload_file238_4048.pdf). Retrieved Date: November 14, 2004.

#### **4.2.2. Guidelines on Foreign Bank Operations in the Philippines**

A review of the existing laws in the Philippines would shed light in dealing with the proposed free trade agreement in financial services, particularly in the field of



banking. As can be recalled, Philippines had liberalized the entry of foreign banks and this was embodied in the General Banking Act and Republic Act 7721.

It shows that the move towards liberalization allowed the entry of foreign banks in three modes of namely, (1) acquisition of allowed, purchase or ownership of the voting stock of the existing banks, (2) investment up to 60 per cent of the voting stock of the new banking subsidiary incorporated under the laws of the Philippines, and (3) establishment of branches with full banking authority.

To date, there are a total of 18 foreign banks in the country, representing 46 per cent of the entire commercial banking industry (<http://www.pdic.gov.ph/database/memberbanks/current/foreigncom.asp>. Retrieval Date: October 17, 2004). While there is a limit on the ownership of these foreign banks, it still shows that there is an increasing participation or presence of foreign banks in the country.

The proposed free-trade agreement with the United States only suggest that the country must not limit the entry of foreign banks in the banking system and will definitely require it to open market access for the United States banks or bank holding companies and other countries for this matter. If the country will allow entry of additional banks, it will already pose a threat to the domestic commercial banks as they will become bigger in number compared to their local counterparts. As cited in the previous discussions, there are 21 local banks with regular and expanded licenses, while there are 18 foreign banks that either operate as a foreign bank branches or as a foreign bank subsidiaries. If the free trade agreement will pave way to the opening up of additional foreign banks for US banks or holding companies under the most-favored nation clause, foreign banks proliferate compared to local banks.

As cited in the preceding chapter, foreign banks and local banks benefited from the entry of foreign banks; however, the former reaped more of the advantages compared to the local commercial banks. Hence, the small gap in the ratios that were generated from the operating results of the banks can be attributed to domestic commercial banks that performed slightly lower compared to domestic banks with expanded banking licenses.

However, while RA 7721 has liberalized foreign bank entry, foreign bank participation in the domestic banking market is still limited. If an increase in the number of US foreign banks cannot be guaranteed by the Philippine government, can the Philippines allow the expansion in the number of branches that can operated in the country from the maximum 6 branches that were originally outlined in the General banking Act of 2000?

Under current laws, foreign ownership of banks is generally limited to 60 percent. With the results of various studies and surveys showing that foreign participation is beneficial in terms of increased efficiency of domestic banks, a policy of further opening up the domestic commercial banking market to foreign presence through an RP-US FTA could be worth pursuing.

Existing or new bank licenses were only given for the acquisition of one (1) bank 100% voting stock. This also applies to the domestic commercial banks as part of their benefits or powers. The maximum allowable six (6) branches given to foreign banks is also a limiting factor as foreign banks have limited access to the financial market. Moreover, restrictions as to the control in the banking system by the foreign banks is concerned were also stressed in Section 73 of the General Banking Law of 2000:

In the exercise of the authority, the Monetary Board shall adopt measures as may be necessary to ensure that at all times the control of seventy percent (70%) of the resources or assets of the entire banking system is held by banks which are at least majority-owned by Filipinos.

Even when the regulatory requirements require non-discriminatory application of host-country prudential standards, foreign banks still face many national requirements. Hence, for both countries, there is restriction on national treatment. Market access and national treatment for Mode of supply 1, 2 and 4 are not a problem.

### **4.3. Modes of Supply in the Stock Market Industry**

The definition of services trade under the GATS is four-pronged, depending on the territorial presence of the supplier and the consumer at the time of the transaction. Pursuant to [Article I:2](#), the GATS covers services supplied. [http://www.wto.org/wto/english/tratop\\_e/serv\\_e/cbt\\_course\\_e/c1s3p1\\_e.htm](http://www.wto.org/wto/english/tratop_e/serv_e/cbt_course_e/c1s3p1_e.htm) Retrieved date: June 14, 2005

#### **4.3.1. Cross Border Supply**

Mode 1 — Cross border trade- from the territory of one Member into the territory of any other Member

Cross-border transactions can be facilitated and enhanced in the field of investments and provision of other financial and other related services in the host country. This can also provide various access to both equities market of the participating countries in the FTA, in this case, RP and US.

#### **4.3.2. Consumption Abroad**

Mode 2 — Consumption abroad--- in the territory of one Member to the service consumer of any other Member

A cross border transaction, may be made possible using 2 modes of supply,

namely, those services or transactions that are provided to non-residents from the country of the service supplier (cross border supply) and the services provided in the country of the service supplier.

### **4.3.3. Commercial Presence**

Mode 3 — Commercial presence-- by a service supplier of one Member, through commercial presence, in the territory of any other Member

The trading participant establishes an office or has presence of commercial facilities in the host country in order to render service related to its activities. With the RP-US FTA, more capital outflows maybe expected since it will open opportunities for more sophisticated financial products like derivatives. However, if we can have a transfer of technology, then we can develop a derivatives market.

Also, facilities are made for investors in both countries to give them access to material information on listed companies they would want to invest in.

### **4.3.4. Movement of Natural Persons**

Mode 4 — Presence of natural persons --by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member

There could be exchanges of personnel through training and employment.

## **4.4. Market Access to Stock Market between the United States and the Philippines**

### **4.4.1. Guidelines of operations of stock market in Philippines**

#### **WHERE CAN I BUY OR SELL SHARES OF STOCKS AND/OR BONDS?**

In the Philippines, the only operating stock exchange is the Philippine Stock Exchange (PSE). Its main function is to facilitate the buying and selling of stocks and other securities through its accredited trading participants.

The PSE has two trading floors - PSE Centre in Ortigas, Pasig City and PSE Plaza in Ayala, Makati City - where trading participants trade daily - from 9:30 a.m. to 12:10 p.m. except Saturdays, Sundays, legal holidays and days when the Central Bank Clearing Office is closed.

## **HOW ARE SHARES AND SDT-BONDS BOUGHT OR SOLD?**

If you wish to buy shares of stocks or SDT-Bonds, you must have a stockbroker who will do this for you. A stockbroker is a person or a corporation authorized and licensed by the Securities and Exchange Commission (SEC) and PSE to trade securities.

### **Investing Procedures:**

1. Choose a stockbroker. The PSE has a complete list and information about all its trading participants who are authorized and qualified to trade either equity or debt securities for you. This list is also available on the Exchange's website and the PLDT directory's Government and Business listings yellow pages under the category of stock and bond brokers.
2. You shall be required to open an account and fill-out a Reference Card and to submit identification papers for verification. The stockbroker will then assign a trader or agent to assist you in either buying or selling any listed security. Discuss with the trader what stocks to buy or sell.
3. Give the order to your broker/trader, and then get the acknowledgement receipt.
4. For equity transactions: Deliver the Stock Certificate if you are selling or pay within the settlement date (3 days from date of transaction) if you are buying. Some brokers may require you to pay with post-dated checks upon ordering.

For SDT-Bonds transactions: Selling investors must open a RoSS account under his broker's sub-account and instruct his bank-underwriter to transfer the share to this account. Buying investors must also open an account with a BTr accredited bank and pay the appropriate amount of transaction to the settlement bank on the trade date.

5. You shall receive from your broker either the proceeds of sale your stocks (after 3 days for equities and on the date of trade for SDT-Bonds) or proof of ownership of stocks you bought (confirmation receipt and invoice). If you wish to have a physical certificate of the equities you bought, just give instructions to your broker and pay the required upliftment fee. Buyers of SDT-Bonds will only be given a confirmation slip in lieu of the bond certificates.

You can purchase shares of stock either through IPO (Initial Public Offering) or through the open market. Shares sold through IPOs are offered for the first time to the public by the company (primary market) whereby proceeds of the sale go directly to the company. Shares of listed or publicly traded companies are bought during trading (open market). These shares have since been transferred from one owner to another (secondary market) and proceeds of the sales do not go directly to the company but to the owners of the shares.

All equity transactions, whether buying or selling has a settlement period of T+3 (trading day + 3 working days). This means that a seller should be able to deliver the stock certificate, if any, to his broker and the buyer must have paid the cost of transaction to his

broker within 3 working days after the trade was done. Historically, settlement was done manually (27-day cycle). With the advent of scripless trading wherein settlement is done via the book-entry-system (thru Philippine Central Depository or PCD), transactions are settled on the third day after trade date. Under this system, the investor has the option to hold on to his certificate (uplift) or deposit (lodge) this certificate in PCD through his broker-participant account.

SDT-Bonds transactions, however, are settled on the same day when the trade is transacted (T+0). There shall be no physical transfer of bond certificates. The transfer of securities shall be conducted electronically by the BTr's Registry of Scripless Securities (RoSS). On the other hand, cash settlement will be coursed through the PSE's two settlement banks namely, Equitable-PCI Bank and Rizal Commercial Banking Corporation.

### **WHAT IS THE MINIMUM AMOUNT NEEDED TO INVEST IN THE STOCK MARKET?**

Equity trading is done by board lot or round lot system. The Board Lot Table determines the minimum number of shares one can purchase or sell at a specific price range. Therefore, the minimum amount needed to invest in the stock market varies and will depend on the market price of the security as well as its corresponding board lot. Prices of stocks move through a scale of minimum price fluctuations.

On the other hand, the minimum amount of SDT-Bonds that an investor can buy is PhP 5,000.00.

<http://www.pse.org.ph>. Retrieved date: June 12, 2005.

#### **4.4.2. Guidelines of operations of stock market in US**

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What the trade-through rule is, why it matters to investors and why it's good public policy.

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##### **NYSE Policy Perspective**

Intermarket competition based upon best prices has benefited U.S. investors and contributed to making the market for NYSE-listed stocks the most liquid and efficient in the world. The trade-through rule, at the heart of the National Market System, is now under threat. Weakening or eliminating the rule could cost investors as much as \$3.5 billion annually in increased execution costs. It would increase the volatility of markets, lessen transparency, and damage or destroy the intermarket system, which is central to maintaining competition across the markets and dealers in the United States.

*What is the trade-through rule?*

Bids and offers for NYSE-listed shares offered on the NYSE, as well as on Nasdaq, the regional exchanges, and ECNs, are linked together and visible to all market makers. The trade-through rule is intended to foster competition and transparency among all markets, while guaranteeing investors receive the best prices and the lowest execution costs when they buy or sell shares. The rule, while protecting investor interests, does not prevent broker/dealers or buy-side firms from sending customer orders in NYSE securities to other venues willing to compete on best price. In fact, 20% of the volume in NYSE stocks is currently executed in other markets.

***Why does the trade-through rule matter to investors?***

The trade-through rule protects investors from receiving something other than the best price when they trade their shares. Weakening of the trade-through rule would take away investors' assurances that their representatives are working to execute their trades at the best price. The difference between the best price and the second best price can be significant—more than 4 cents per share for the S&P100 stocks listed on NYSE. These additional expenses would affect all investors, large and small. But the brunt of them would be borne by small investors who are less able to monitor closely execution costs and to question their brokers or agents about prices received. Investors deserve and demand the highest quality order executions and the best price on their transactions.

**Table 21**

**Cost to Shareholders of Trading Through  
NYSE Listed S&P100 Stocks (93 companies)  
Average National Best and Second-best Bid and Offer Prices**

| <b>NYSE Listed S&amp;P100 Stock</b> | <b>National Best Bid (\$)</b> | <b>National Best Offer (\$)</b> | <b>National Best Spread (cents)</b> | <b>National Second Best Bid (\$)</b> | <b>National Second Best Offer (\$)</b> | <b>National Second Best Spread (cents)</b> | <b>Cost to Investors without Trade Through Rule (cents)</b> |
|-------------------------------------|-------------------------------|---------------------------------|-------------------------------------|--------------------------------------|--|--|---|
| Average                             | 39.88                         | 39.89                           | 1.83 (cents)                        | 39.83                                | 39.93                                  | 10.25 (cents)                              | 4.21 (cents)  |

*Note: Based on intra-day price quotes for week of December 8-12, 2003.*

***Why does the trade-through rule matter to companies?***

NYSE-listed companies currently enjoy the advantages of head-to-head price competition—where all buyers and sellers bid against one another in real time for shares, rather than in a fragmented system where different clusters of traders transact at different prices in the same security. Companies benefit since their share prices are less volatile and more reflective of fundamentals. Owners find that their holdings are more liquid. Retail investors are not pushed aside by buyers and sellers of very large positions,

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and the same prices apply to all. Quoted bid-ask spreads are narrower in the marketplace for NYSE stocks, lowering execution costs and particularly benefiting medium and smaller companies. Companies with more liquid securities are thus able to raise new capital in IPOs or in secondary offerings in a market place that brings together the largest number of buyers and sellers within a unified pricing mechanism.

***Why is the trade-through rule good public policy?***

The trade-through rule promotes both best price and competition among markets. Eliminating or diluting the trade-through rule would mean a return to the uncoupled markets of 30 years ago. It would weaken competition and transparency by licensing each market to ignore better prices elsewhere. It would increase the likelihood that intermediaries charged with managing households' wealth would put their own convenience or interests above that of their clients; more freely engaging in practices such as internalization and payment for order flow, which increase their own profitability at the expense of investors. It would seriously impair the fair and accurate price discovery and stock valuation. And at the end of the day, the trade through rule is about preserving a principle at the core of our markets: the ultimate investor must always get the best price.

***What is the NYSE Committed to Doing for Customers?***

- We will continue to compete with other markets for trading of NYSE-listed shares, striving to provide the narrowest spreads and best price for investors. At present, the NYSE posts the best price 93% of the time. But where we do not offer the best price, we are committed to sending orders to the market which does.
- We will provide customers with the widest choice of order execution services. Thanks to our blend of advanced technology and the agency auction process, we can offer everything from automatic executions to a floor auction, which produces an improvement in price on nearly one-third of all transactions.
- We will provide the benefits associated with the specialists' role in bringing together buyers and sellers, ensuring liquidity and accountability, and dampening volatility, in addition to the agency floor brokers' role of representing large orders over time to reduce market impact.
- We will provide a regulatory infrastructure that promotes fairness for all investors, large and small, and puts the interests of investors as our first priority.

<http://www.nyse.com/about/nyseviewpoint/1094784439385.html>. Retrieved date: June 11, 2005.

**4.4.3. Guidelines on listing in the Philippine Stock Exchange**

**BASIC GUIDELINES**

| FIRST BOARD  | SECOND BOARD  | SME BOARD   |
|--|---|---|
| <ul style="list-style-type: none"> <li>a. A track record of profitable operations for three (3) full fiscal years;</li> <li><b>or</b></li> <li>b. A market capitalization of P500 m, provided that it has a five-year operating history; <b>or</b></li> <li>c. Net tangible assets of P500 m, provided that it has a five-year operating history.</li> </ul> | <ul style="list-style-type: none"> <li>a. The applicant company must demonstrate its potential for superior growth to the Exchange;</li> <li>b. It must have an operating history of at least one (1) year prior to its listing; and</li> <li>c. At listing, the market capitalization of the company must be at least P250 m.</li> </ul> | <p>The applicant company shall be evaluated based on the following:</p> <ul style="list-style-type: none"> <li>a. The integrity and capability of the company's management and its controlling stockholders;</li> <li>b. The company's prospects of further growth and profitability;</li> <li>c. The viability of the business and sustainability of the projected earning stream; and</li> <li>d. The company's lack of existing material conflicts of interest.</li> </ul> |

#### TRACK RECORD REQUIREMENT

| FIRST BOARD  | SECOND BOARD   | SME BOARD  |
|--|--|--|
| <p>A company must have a cumulative consolidated pre-tax profit of at least at least P50 Million and a minimum pre-tax profit of P10 Million for each of the three (3) full fiscal years immediately preceding the application for listing. For purposes of this rule, pre-tax profit shall not include non-recurring and extraordinary income, nor shall it be reduced by non-recurring and extraordinary</p> | <p>None, but must demonstrate <i>a potential for superior growth</i>, through the submission of <b>Statement of Active Business Pursuits and Objectives</b>.</p> | <p>The applicant company should have been operational for at least one (1) year with positive net operating income (income before interest, taxes, depreciation and amortization-EBITDA) during the last financial year.</p> |



|   |  |  |
|---|--|--|
| <p>loss. The applicant must further be engaged in materially the same businesses and must have a proven track record of management throughout the last three (3) years prior to the filing of the application.</p> <p><i>Exceptions to the 3 year track record rule:</i></p> <ul style="list-style-type: none"> <li>a. The applicant company has been operating for at least Ten (10) years prior to the filing of the application. The applicant company shall have a cumulative pre-tax profit of at least P50 Million, excluding non-recurring and extraordinary income and/or loss, for the last Three (3) fiscal years immediately preceding the application for listing. No net operating loss must have been registered in the fiscal year immediately preceding the filing of the application;</li> <li>b. The applicant company is a newly formed holding company which uses the operational track record of its subsidiary(ies). The company, however,</li> </ul> |  |  |
|---|--|--|

|   |  |  |
|---|--|--|
| <p>is prohibited from divesting its shareholdings in the said subsidiary(ies) for a period of three (3) years from the listing of its securities. The prohibition shall not apply if a divestment plan is approved by majority of the applicant company's stockholders.</p> |  |  |
|---|--|--|

#### NUMERICAL CRITERIA

| FIRST BOARD   | SECOND BOARD  | SME BOARD  |
|---|---|--|
| <p>Authorized Capital Stock-<br/>Minimum-<br/>P400,000,000.00</p>   | <p>Authorized Capital Stock-<br/>Minimum-<br/>P 100,000,000.00</p>  | <p>Authorized Capital Stock-<br/>Minimum-<br/>P 20,000,000.00</p>  |
| <p>Subscription &amp; Paid-up-<br/>Minimum-<br/>P100,000,000.00</p> | <p>Subscription &amp; Paid-up-<br/>Minimum-<br/>P 25,000,000.00</p>   | <p>Maximum-<br/>P 100,000,000.00</p>   |
| <p>Minimum Par Value-<br/>P 1.00</p>                                | <p><i>Condition on Paid-up: at least 75% of the paid-up must have already been disbursed to the project, venture or business referred to in the business plan</i></p> | <p>Subscription &amp; Paid-up-<br/>Minimum-<br/>25% of the ACS</p>   |
|   | <p>Minimum Par Value-<br/>P 1.00</p>  | <p>* The applicant company should have net tangible assets of at least Five Million Pesos (P 5,000,000.00). The net tangible assets requirement is not applicable to information technology companies.</p> |
|   |   | <p>Minimum Par Value-<br/>P 1.00</p>   |

## OPERATING HISTORY

| FIRST BOARD   | SECOND BOARD                            | SME BOARD                         |
|---|---|-----------------------------------|
| For a track record of profitable operations- At least three (3) full fiscal years prior to the filing of the listing application if with track record<br>For a market capitalization or net tangible assets of P500M - at least five (5) years. | At least one (1) year prior to listing. | At least one (1) year from filing |

[www.pse.com.ph](http://www.pse.com.ph) Retrieved date: June 12, 2005

### 4.4.4. Guidelines on listing in the New York Stock Exchange

#### U.S. STANDARDS

Domestic listing requirements call for minimum distribution of a company's shares within the United States. Distribution of shares can be attained through U.S. public offerings, acquisitions made in the U.S., or by other similar means. Note that there are alternatives to the round lot-holders and pre-tax earnings standards. For a more complete discussion of the minimum numerical standards applicable to U.S. companies, [see Section 102.00 of the Listed Company Manual](#).

#### Minimum Quantitative Standards: Distribution and Size Criteria

|   |            |
|---|------------|
| Round-lot Holders (A)<br>(number of holders of a unit<br>of trading - - generally 100 shares) | 2,000 U.S. |
|---|------------|

or:

|                        |       |
|------------------------|-------|
| Total Shareholders (A) | 2,200 |
|------------------------|-------|

...together with:

|  |                |
|--|----------------|
| Average Monthly Trading Volume<br>(for the most recent six months) | 100,000 shares |
|--|----------------|

or:

|                        |     |
|------------------------|-----|
| Total Shareholders (A) | 500 |
|------------------------|-----|

...together with:

|   |                  |
|---|------------------|
| Average Monthly Trading Volume<br>(for the most recent 12 months) | 1,000,000 shares |
|---|------------------|

Public Shares (B) 1,100,000 outstanding

|   |  |
|---|--|
| Market Value of<br>Public Shares (B,C): |  |
|---|--|

Public Companies \$100 million

IPOs, Spin-offs, Carve-outs and Affiliated  
Companies \$60 million

**Minimum Quantitative Standards: Financial Criteria**

**Earnings**

Aggregate pretax earnings (D) over the last three years \$10 million

Minimum in each of the 2 most recent years \$2 million

(must be positive amount in the third year)

or:

**Valuation with Cash Flow**

For Companies with not less than \$500 million in Global market capitalization and \$100 million in revenues during the most recent 12 months:

Aggregate Operating Cash Flow(E) over the last three years  
(each year must report a positive amount) \$25 million

or:

**Pure Valuation**

Revenues for the Most Recent Fiscal Year \$75 million

Global Market Capitalization (F) \$750 million

or:

**Affiliated Company** Original distribution requirements as noted; market capitalization of \$500 million or greater; entity must have 12 months of operations (although it is not required to have been a separate entity for that long); parent or affiliated company is a listed company in good standing; and parent or affiliated company retains control of the entity or is under common control with the entity.

or:

REITs (less than 3 years operating history) (B)  
Stockholders' equity \$60 million

or:

**Funds** (less than 3 years operating history) (B)  
Net assets

\$60 million

- (A) The number of beneficial holders of stock held in "street name" will be considered in addition to the holders of record. The Exchange will make any necessary check of such holdings that are in the name of Exchange member organizations.
- (B) In connection with initial public offerings, spin-offs and carve-outs the NYSE will accept an undertaking from the company's underwriter to ensure that the offering will meet or exceed the NYSE's standards.
- (C) If a company either has a significant concentration of stock or changing market forces have adversely impacted the public market value of a company that otherwise would qualify for an Exchange listing, such that its public market value is no more than 10 percent below the minimum, the Exchange will consider stockholders' equity of \$60 million or \$100 million, as applicable, as an alternate measure of size.
- (D) Pre-tax income is adjusted for various items as defined in Section [102.01C](#) of the NYSE Listed Company Manual.
- (E) Represents net cash provided by operating activities excluding the changes in working capital or in operating assets and liabilities, as adjusted for various items as defined in Section [102.01C](#) of the NYSE Listed Company Manual.
- (F) Average global market capitalization for already existing public companies is represented by the most recent six months of trading history. For IPOs, spin-offs and carve-outs, it is represented by the valuation of the company as represented by, in the case of a spin-off, the distribution ratio as priced, or, in the case of an IPO/carve-out, the as-priced offering in relation to the total company's capitalization.

#### **Additional Considerations**

In addition to meeting the minimum numerical standards listed above, there are other factors which must necessarily be considered. The company must be a going concern or be the successor to a going concern.

The Exchange has broad discretion regarding the listing of a company. The Exchange is committed to list only those companies that are suited for auction market trading and that have attained the status of being eligible for trading on the Exchange. Thus, the Exchange may deny listing or apply additional or more stringent criteria based on any event, condition, or circumstance that makes the listing of the company inadvisable or unwarranted in the opinion of the Exchange. Such determination can be made even if the company meets the standards set forth above.

<http://www.nyse.com/about/nyseviewpoint/1094784439385.html>. Retrieved date: June 11, 2005.

## **4.5 Mode of Supply in the Insurance Industry**

Following the modes of supply presented in the banking and stock market industries, we apply them to the insurance industry.

### **4.5.1. Cross Border Supply**

Cross-border transactions can be facilitated and enhanced in the insurance industry.

### **4.5.2. Consumption Abroad**

Since the Philippine insurance industry is fully liberalized, what will make it attractive to American insurance companies to do business here in the Philippines or attract again those who have left. Is the market for life insurance not yet saturated? Also,

can Philippine insurance companies compete in the United States and provide service to our OFWs and permanent residents. For the non-life, how much will the American insurers affect the market share of the dominant domestic players.

#### **4.5.3. Commercial Presence**

At present, some investors would rather invest their money in dollar denominated financial products which maybe found outside the Philippines. The growth of the Philippine economy can be attributed to remittances made by Overseas Filipino Workers (OFWs). The insurance companies can tap the remittances made by the OFWs. Both American and Philippine insurers can offer alternative products to savings.

#### **4.5.4. Movement of Natural Persons**

Like the banking and stock market, there could be exchanges of personnel in the insurance industry.

### **4.6 Market access to insurance Service**

#### **4.6.1 Laws on Insurance**

[http://www.pinoylaw.com/library/laws/insurance\\_law.htm](http://www.pinoylaw.com/library/laws/insurance_law.htm) Retrieved date: June 12 2005 discusses the laws on insurance.

The laws on insurance in the Philippines can now be found in the Insurance Code of 1978 (Presidential Decree No. 1460 which superseded Presidential Decree No. 612), special laws, and partly in the provisions of the Civil Code, namely Articles 749 and 2012 on void donations, Article 2011 on the applicability of the Civil Code, Articles 22021-2027 on life annuities, and Article 2186 on compulsory motor vehicle liability insurance.

In addition, there is the Property Insurance Law (Republic Act No. 656 as amended by Pres. Decree No. 245) which deals with government property.

#### *Applicability of the law*

Article 2011 of the Civil Code states that if the Insurance Code does not specifically provide for a particular matter in question, the provisions of the Civil Code regarding contracts shall govern. As to the hierarchy of laws, therefore, insurance contracts are

governed primarily by the Insurance Code and subsidiarily by the Civil Code. In case of conflict, the Insurance Code will apply.

### **Outline of the Insurance Code of the Philippines**

The Insurance Code of the Philippines is American in origin, having been principally patterned on the Civil Code of California. Even up to this time, the general principles prevailing on Insurance in the United States, particularly the state of California, may find application in this jurisdiction.

#### **4. 6.1 California INSURANCE CODE SECTION 1-48**

1. This act shall be known as the Insurance Code.
2. The provisions of this code in so far as they are substantially the same as existing statutory provisions relating to the same subject matter shall be construed as restatements and continuations thereof, and not as new enactments.
3. All persons who, at the time this code goes into effect, hold office under any of the acts repealed by this code, which offices are continued by this code, continue to hold the same according to the former tenure thereof.
4. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by the provisions of this code, but all procedure thereafter taken therein shall conform to the provisions of this code so far as possible.
5. Unless the context otherwise requires, the general provisions hereinafter set forth shall govern the construction of this code.  
<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=ins&codebody=&hits=20>  
California Insurance Code. Retrieved date: June 12 2005

### **5. Impact of these flows and Mode of Supply to the Philippine Financial Services**

#### **5.1. Banking Industry**

##### **5.1.1. On Cross Border Transactions**

While market access for the foreign banks may be improved by reducing the impediments it may face abroad in servicing the home market, it would not also be easy

for the Philippines to tap the US market. Even if a local bank in the Philippines will be accorded national treatment just like its domestic counterparts, they will compete the hard way as it will compete with other foreign financial institutions abroad, unless it will tap the Filipino community or OFWs. With the advent of internet commerce and online foreign exchange trading, provision of this services won't be very difficult but attracting the market would be tough.

In this mode of supply, the Philippines would not be very competitive or would not be an attractive market for the United States customers. This is because of the very limited investment alternatives that can be offered to them. What will only attract them to bring in funds is to attract very competitive rates that far outweigh those that are provided by the home country.

Hence, it is believed that cross-border operations can increase the ownership share of the foreign banks in the emerging markets. Like other authors, they claimed that ownership of banks in the emerging markets by the foreign counterparts improves overall bank soundness, especially when the foreign parent banks belong to well-regulated financial systems and are themselves healthy.

### **5.1.2. On Consumption Abroad**

On the other hand, for local residents who wish to bring their money abroad may likewise encounter problems regarding deposits. If they intend to deposit it to a foreign branch of a local bank, they will encounter problems regarding insured deposits. However, if they intend to deposit in any of the biggest local banks in the United States, problems by local residents who would like to avail of the services may not encounter problems on their deposits. Hence, any investment or deposit made by the local resident in the United States is still subject to anti-money laundering act.

In the case of the US residents who wish to avail of the services of local banks, the same would not be a problem to the country. Moreover, they can with any other banks operating in the country.

### **5.1.3. On Commercial Presence**

Republic Act 7721 that liberalized foreign bank entry provides for foreign bank participation in the domestic banking market on a limited basis. Under current laws, foreign ownership of banks is generally limited to 60 percent. This is already very modest for the banks compared to the maximum of 50% share that can be owned by banks. Hence, the same is not as modest as the one provided under the USSFTA where the Singapore government provided less stringent policies on this aspect.

As can be recalled, the 1994 Foreign Bank Liberalization Act of 1994 provided 10 new foreign banks to operate full service branches in the Philippines, aside from the four existing banks that operated prior to 1948, which were also allowed to open up six



additional branches. Foreign ownership was limited up to 60% of the while that did not meet the criteria provided for in the Act were given up to a maximum of 40% ownership. Moreover, with the creation of the General Banking Act of 2000, that amended the 1948 GBA, banks were given a seven-year window to own up to 100 percent of one locally-incorporated commercial or thrift bank. This actually provides a relaxation of the 60 percent ceiling on the provided for in the Foreign Bank Liberalization Act of 1994. Hence, no foreign bank is allowed to establish a rural bank. The same can be beneficial to the 14 foreign bank branches as they are given 100% ownership of the bank's voting rights.

With the results of various studies and surveys showing that foreign participation is beneficial in terms of increased efficiency of domestic banks, a policy of further opening up the domestic commercial banking market to foreign presence through an RP-US FTA could be worth pursuing. The issue lies on whether the government will still allow additional banks to be opened up aside from the existing 19 foreign banks that are currently allowed to operate in the country. The government can consider entry in the thrift banking industry where foreign banks will deal more on retail banking than wholesale banking. But as sounded of by foreign banks, they cannot compete with the local banks as far as retail deposits are concerned. That is the reason why they tap the wholesale banking business.

It must be noted that the biggest share of foreign banks located in Asia can be attributed to the country's commitment in the APEC and other regional trading arrangements in ASIA. If the country will again liberalize foreign bank operations, will this be on an MFN basis/part of its specific commitment to the free trade agreement or will this be offered to all foreign banks. As can be revealed in the study, only JP Morgan is the new U.S. bank entrant. Standard Chartered Bank, Bank of America and Citibank, N.A. had been operating in the country prior to the foreign bank liberalization. Are we becoming less attractive to U.S. banks or are we still perceived as very restrictive in the granting of foreign bank licenses?

#### **5.1.4. On Movement of Natural Persons**

The establishment or presence of natural persons of foreign bank branches, foreign bank subsidiaries, offshore banking units or representative offices will pave way to the movement of American personnel in the Philippine territories. Aside from this, the development of new products and services that will be offered in the financial market, particularly derivatives and other fixed securities instruments, and the issue pertaining to the implementation of Basel II Accord on Capital Standards require the expertise of these financial guru or expatriates that can either be tapped by the Philippine government in introducing these instruments to the service providers or by the foreign and local banks and other financial affiliations. In fact, BSP had continuously invited people from Federal Reserve Bank and other financial experts in providing trainings or seminars to examiners and top bank officials in these aspects.

As regards the entry of foreign bank expatriates, the specific guidelines are provided for in Rule XVII Section D of Republic Act No. 8756, otherwise known as the Omnibus Investment Code, as amended. The foreign personnel of regional or area headquarters and regional operating headquarters and their respective spouses and unmarried children under twenty-one (21) years of age, if accompanying them or if following to join them after their admission into the Philippines as nonimmigrant shall be given a maximum term of three years, subject to an extension of another 3 years upon submission to the Bureau of Immigration sworn statement by its authorized regional headquarters of said extension. [http://www.disini.ph/res\\_irr\\_ira8756.html](http://www.disini.ph/res_irr_ira8756.html). Retirement Date: June 10, 2005

It can be seen that the limitations regarding their entry is unbounded.

## **5.2. Stock MARKET**

### **5.2.1. Cross Border**

At present, cross border trading is evident already in the Philippine stock market through on-line trading is already being done by some trading participants. However, the Philippines, as a whole, is still not widely connected through the Internet, which is now widely being used as a medium for trade in developed countries. (Stock market interviewee, 2004; Banker interviewee, 2004).

The Philippine Stock Exchange raised the need to discuss the applicable law for cross border transactions and where will be the jurisdiction for Dispute Settlement involving cross border transactions. A question that may arise is the enforcement of penalties for cross border violations. (PSE, 2004).

The RP-US FTA can explore the possibility of simplifying cross-border listing for top US and RP companies. (Stock market interviewee, 2004). It could also provide the avenue for developing new products/ services, hybrid products. (BSP interviewee, 2004).

The difference in tax rates (dividends, and capital gains) will have to be addressed. Types of products offered will be expanded in the Philippines as Real Estate Investment Trust (REIT), unit trusts, mortgage backed securities among others will be considered. (Stock market interviewee, 2004).

The RP-US FTA may study if U.S. firms can provide asset/portfolio management securities services, securities settlement systems, financial asset management and credit rating in Philippines through the establishment of a local office, or by acquisition of local

firms by American companies. (BSP 2004; Stock market interviewee, 2004). Hopefully, this will improve the Philippine stock market

### **5.2.2. Consumption Abroad**

There is a need to be able to list more stocks in the United States and also in the Philippines. At present, the Philippine Long Distance Company with stock symbol (TEL) traded in the Philippine Stock Exchange is also traded in the New York Stock Exchange (NYSE) as an American Depository Receipts (ADR) with stock symbol (PHI). An ADR is a certificate issued by a US bank containing a statement that a specific number of shares in a foreign company has been deposited with them. The certificates are denominated in US\$ and can be traded as a security in US market. (Oxford Dictionary of Finance, 1996 Oxford University Press).

### **5.2.3. Commercial Presence**

Some countries require commercial presence to provide financial services. With regard to mode of access, the most common limitations imposed are in the areas of establishing commercial presence and presence of natural persons.

The first mode of supply may be considered as restrictive as it involves foreign direct investments and it requires foreign service providers to enter through joint ventures whose ownership must still be retained by domestic nationals that can serve as members of the board of directors of the company. This encompasses benefits such financial asset management.

In the case of the Philippine equities market, it adheres to the provision of the Philippine Constitution on foreign ownership and the Foreign Investment Policy.

### **5.2.4. Movement of Natural Persons**

Synergy of personnel through training and employment. However, there is a limit on the number of Filipinos entering the US. Diaz, Ong, Perlado, Pineda, Yu (2004)

## **5.3. INSURANCE INDUSTRY**

### **5.3.1. Cross Border**

The RP-US FTA may study if U.S. firms can provide actuarial services, investment advice for the insurance companies to keep the safety of the premiums paid by the insured.

### **5.3.2. Consumption Abroad**

The non-life insurance companies can further explore the reinsurance business. For the life insurance companies, introduction of new products that will meet the investment requirements of the insured.

### **5.3.3. Commercial Presence**

In the case of the Philippine insurance industry, it adheres to the provision of the Insurance Code and the Guidelines on the Liberalization of Insurance Industry. As discussed earlier, there were foreign insurers who left the country after the 9/11 incident and the slowdown in economic growth that the Philippines faced after the Asian crisis.

For insurance, can US firms open offices here and sell dollar denominated policies (as a hedge against the ever-dwindling value of the peso)? (Insurance interviewee, 2004)

Opening up the Philippines' mutual fund business is one big market the US may be interested. Retirement and insurance services are another area that will look very exciting. Offering RP debt and securities products in the US as country designated mutual funds is good for asset diversification. (Stock Market interviewee, 2004).

### **5.3.4. Movement of Natural Persons**

Allow technology transfers and talent exchange by providing extended stay to banking professionals for training purposes. (Banker interviewee, 2004)

In the financial services, the movement of natural persons can be realized by the Philippines as a location for backroom operations of US firms without new products being sold or introduced here, which is not necessarily bad and can be a good development, in line with the Philippines positioning itself as a "service economy or outsourcing." (BSP interviewee, 2004; Stock market interviewee, 2004. The export of consultancy services is one area where the Philippines is considered to have a competitive advantage. Specific areas are (a) information technology (IT); (b) computer software services (customized software consultancy, contract programming, training and documentation services, systems integration and data entry/data processing services); (c) consultancy engineering (infrastructure and industrial development projects in the

following sectors: power, transportation, telecommunications, water supply, oil, gas, and petrochemicals, industrial estates and processing plants); and (d) contracting services (call centers, business processes, outsourcing, process data and they are up-to-date with accounts receivable and inventory (while they are sleeping); plenty of overtime; communication costs reduced because of technology; makes it feasible. (Diaz,F., Ong,C., Perlado J., Pineda, L, and Yu, D.;BAP interviewee, 2004; Stock market interviewee).

There is an array of things to negotiate. What we want is foreign direct investment (FDI). Also, the existing tax treaty does not cover the deduction in the other side. It is suggested to create certain taxes that are not regular taxes in international field and not recognized as income tax. (BAP interviewee, 2004)

## **6 The Free Trade Agreement in the Philippine Financial Services Industry**

Warner and Gerbasi (2004) cited the United States Trade Representative (USTR) definition on free trade as an opportunity to gain market access worldwide for US goods and services and to generate more quality and choice for the consumers. In this article, two issues were raised: 1) Free trade goals focus on removing perceived barriers to the flows of money, services and goods; 2) Trade agreements don't regulate industry. However, they regulate government activity.

In general, in a free trade agreement (FTA) trade barriers in goods and services are removed between participating countries, but each retains own barriers with non-participating countries. FTA gives a positive signal to foreign investors because it assures them the groundwork has been laid down to make the country globally competitive.

In recent years, preferential trade agreements, both bilateral and plurilateral ones, have characterized the world's economy. Indeed, this trend, especially the proliferation of bilateral trade agreements in Asia, has raised several issues and challenges to the Philippine society. (Abraham, Babanto, Jao, Kuon, Pabayos, 2004). While "majority of these preferential agreements are aimed at promoting intra-regional trade among neighboring states, more ambitious initiatives seek to expand inter-regional and cross-continental economic relations" (Avila & Manzano, 2002). A country entering a preferential agreement grants its partner country or countries lower duty or even duty free treatment of imports as compared to the tariffs it imposes on other countries (Avila & Manzano, 2002). Although each of the partners is free to set its own rates on the imports coming from other countries not involved in the agreement. (Abraham, Babanto, Jao, Kuon, Pabayos, 2004).

Negotiators have to consider whether to liberalize all services under all modes of supply and across all sectors. Krugman (1997) focused on the economics and politics of free trade to serve as framework for what trade negotiators negotiate about. The essential element is the harmonization of standards.

FTA is expected to provide an impetus in the economic growth of the countries involved. Two implications of an FTA are trade creation and trade diversion. In trade creation, cost efficiencies are established thus creating affordable goods or services for consumers. (Co, et al 2004). Trade is diverted when inefficient firms inside the FTA gain market access at the expense of efficient firms from non-members. (Co, et al 2004).

Apart from cross-border supply, talks should consider trade through commercial presence and movement of natural persons. The key question here is to what extent should regulatory regimes be harmonized between two prospective partners (Abraham, Babanto, Jao, Kuon, Pabayos, 2004; Avila & Manzano, 2002 p.21).

A Free Trade Agreement in the Financial Services Industry between the Philippines and the United States of America will open a lot of investment opportunities for both the Philippines and the United States of America. Vital (2004) stated that the Philippines and US have natural mutual diversification opportunities. Unite (2002) showed that there is weak cointegration (using the Johanssen cointegration test) between the US and Philippine capital markets which means that the two countries are natural diversification outlets for each other.

The openness in financial markets provides opportunities for investors to choose between domestic and foreign financial assets. (Diaz, F., Ong, C., Perlado, J., Pineda, L., Yu, D., 2004). By opening up the financial markets and leveling the playing field, the Philippine financial services industry have to become more efficient, offer new and exciting products to investors particularly in the capital markets to be competitive with its American counterparts.

The FTA provides facilities for the free movement of goods and services which can spur the economic growth of the Philippines. It will serve as an impetus in the economic reforms and deflect protectionist pressures of the country. It is expected to boost the image of the developing economy, in this case, the Philippines, as a dynamic one, thereby enhancing its standing in the international market.

The US is expected to benefit from this FTA by being able to enter market niches in the financial services industry. At present, there is a strong hold in the wholesale banking for foreign banks (Hapitan, 2000) and American companies in the life insurance industry ([www.ic.gov.ph](http://www.ic.gov.ph)). Since the FTA assumes that goods and services can move freely, the same agreement should be non-discriminatory.

There will be reciprocity for both countries in establishing commercial presence in the host country. The RP-US FTA agreement can open doors for product/ services innovations, new standards for new or existing products and services through knowledge and technology transfer in the financial services industry. One product/ services that the US may find a niche is in the mutual fund industry and the undeveloped fixed income / debt market of the Philippines.

With the FTA, it is expected to have infusion of new investment, improvement of trading and settlement infrastructures and information system. Such developments will challenge the Philippine financial services industry to institute further reforms to shape up and compete.

The further entry of American companies in the financial services industry may dent the market share of local players. The onset competition will force local players to update technologies and have robust capitalization to be able to be at par with those services offered by the foreign competitors.

Based on the interviews conducted, some key informants believe that the RP-US FTA will bring in benefits for the two countries involved. Key informants see the

following benefits of the proposed FTA (Annex A). However, some informants are skeptic on these benefits.

In the banking industry, the removal of barriers will make local banks more competitive and efficient with their US banking counter parties through services that should be able to penetrate markets abroad. With this FTA, the major banks of the Philippines would be encouraged to put up branches in the US, which would increase the efficiency of the country in facilitating the yearly inflow of remittances. (Banker interviewee, 2004; Anglo, J., Rodil,D., Tungol, N., Vichuaco, L, 2004). Our biggest inflow is the remittances from the Overseas Filipino Workers (OFWs). It has a great impact and is really a saving grace for us because it helps stabilize the foreign exchange rate. If these remittances pass through the proper channels, the banking system would definitely benefit, and its facilities would definitely be improved to accommodate the sum of money being sent back to the country. The remittances should pass through the appropriate channels and not the black market. (Banker interviewee, 2004; Anglo, J., Rodil,D., Tungol, N., Vichuaco, L, 2004; Diaz,F., Ong,C., Perlado J., Pineda, L, and Yu, D., 2004). There are remittances that are course through other persons which becomes the problem. If possible, that all remittances can go through the proper channels, example Western Union. There are people who resort to other means than the banks since the banks have bigger interests. Therefore, there should be a plan to make additional incentives to urge these people to go through legal channels so that whatever tax they can get will go to the counter of the national government and not to the black market. (Banker interviewee, October 2004).

Remittances by overseas Filipino workers (OFWs) post double-digit growth for the second straight month, expanding year-on-year by 14.5 percent in July 2004 to reach US\$734 million. This brought the cumulative remittances for the first seven-months to US\$4.7 billion, up by 5.0 percent compared to the comparable level last year. OFW remittances are expected to expand by 6 percent in 2004. Countries such as Hong Kong, Japan, Singapore, Italy, U.S., U.K., Saudi Arabia, and United Arab Emirates (UAE) continued to be the major sources of these remittances. ([www.bsp.gov.ph](http://www.bsp.gov.ph), Retrieved date: October 20, 2004). Table 21 below shows the OFW remittances from January 2000-July 2004



Table 21  
OFW REMITTANCES

| FOR THE PERIODS INDICATED           |         |            |           |              |            |
|-------------------------------------|---------|------------|-----------|--------------|------------|
| IN THOUSAND US DOLLARS              |         |            |           |              |            |
|                                     |         |            |           | Growth rate  |            |
|                                     |         |            |           | year-on-year |            |
| YEAR                                | Monthly | Cumulative |           | monthly      | Cumulative |
| 2000                                | Dec     |            | 6,050,450 |              | -10.95     |
| 2001                                | Dec     |            | 6,031,271 |              | -0.32      |
| 2002                                | Dec     |            | 7,189,243 |              | 19.2       |
| 2003                                | Dec     | 724,675    | 7,639,955 |              | 6.27       |
| 2004 <sup>p/</sup>                  | Jan     | 624,022    | -         | -4.96        | -          |
|                                     | Feb     | 607,499    | 1,231,521 | 12.25        | 2.82       |
|                                     | Mar     | 722,207    | 1,953,728 | 12.71        | 6.26       |
|                                     | Apr     | 659,790    | 2,613,518 | -5.62        | 2.99       |
|                                     | May     | 695,598    | 3,309,116 | -7.34        | 0.63       |
|                                     | Jun     | 706,096    | 4,015,212 | 19.41        | 3.49       |
|                                     | Jul     | 734,267    | 4,749,479 | 14.47        | 5.05       |
|                                     |         |            |           |              |            |
| <sup>p/</sup> preliminary           |         |            |           |              |            |
| Source: Bangko Sentral ng Pilipinas |         |            |           |              |            |

With the RP-US FTA, the entry of US Banks in the country will enhance the capital market by introducing competition in the environment and expanding the variability of services offered in the financial services sector.

An RP-US FTA would improve the financial services offered by the country. Since all of the transactions would be going through banks, this would definitely lead to an increase in the flow of finances in the system, which would later on increase the amount that is loaned to local companies, which would in turn lead to expansion. (Banker interviewee, 2004; Anglo, J., Rodil, D., Tungol, N., Vichuaco, L, 2004). The scope of the trade agreement may cover the import/export of consumer products, all import/export transactions are negotiated in a commercial banks, thus, banks play an important role in this kind of trade activities.” (Banker interviewee, 2004; Ablaña, L.A., Conde, G., Garcia, R., Magsaysay, Ma. E., Sanchez, A.A., 2004).

In the insurance industry, FTA would increase competitiveness within the industry, and the Philippines even has the advantage. An individual would want to avail insurance from someone he knows and trusts already and not from a complete stranger. Clients would prefer to buy to local insurance companies, as they already have an idea of the credibility of such company, rather than to some foreign company that just came in.

(Abraham, Babanto, Jao, Kuon, Pabayos, 2004). Milo (2003) said in her study that the insurance industry can further be developed. Thus, providing a groundwork for the entry and cooperation of American insurance companies with their local counterparts.

In the stock market, an RP-US FTA will encourage infusion of new investment into the capital market scene. (PSE,2004). It will definitely improve the following: a) freer flow of capital that will boost liquidity not only in the equities but likewise debt markets, b) strategic alliances with US based companies will enhance research and risk management capability of local houses, c) bench-marking with global best practices will be the order of the day among others. (Stock market interviewee, 2004). Another wave of mergers and acquisition might be the order of the day for the local banking sector. The brokerage houses will be forced to likewise merge, increase their capital base, or simply have strategic tie-ups with international houses in order to compete.” (Stock market interviewee, 2004). Closer trading ties with the US would result to the improvement of trading and settlement infrastructures and information system through knowledge and technology transfer. (PSE 2004). The agreement may even help encourage Multinational Corporations to list in the PSE. (PSE 2004).

The drive to increase the competitiveness of the products/services offered by the country would increase the skills of our workforce. (Banker interviewee, 2004). With the entry of foreign financial institutions, it could lead to the adoption of the best practices which the domestic financial services industry can follow. The capabilities and skills of the employees of domestic financial services industry are enhanced in order for them to meet the risks and opportunities offered by the securities and bond markets by deepening the domestic financial system. They will be able to use various hedging instruments necessary to manage different risks involved in a more liberalized and internationally integrated financial system. (Co, Cristobal, Imperial, Princesa, Tayag, 2004). However, an FTA might lead to the Philippines merely being a location for backroom operations of US firms without new products being sold or introduced here, which is not necessarily bad and can be a good development, in line with the Philippines positioning itself as a “service economy.” (Stock market interviewee, 2004). There will be a need for wider connection to the Internet, which is used as medium of trade for in developed countries.

However, some respondents are not keen on the RP-US FTA and are concerned with the negative effects of the agreement.

For all the sectors, banking, insurance, and stock market, a concern is that the FTA may probably create a non-proportionate number of foreign and domestic players. One of the implications of the RP-US FTA is the market share of the domestic players might be eaten up by the foreign players as evidenced already in the life insurance industry and the stock market. Foreign countries may freely enter the country since they can afford the capitalization needed in order to expand their services.

Our domestic banks, at the rate they are performing right now, and with all the crises and so, it will be close to impossible to afford bringing their services to other countries. The present Philippine Banking Sector does not earn a consistent remarkable rating in comparison with the industry in other regions. Foreign banks will benefit in their Philippine branches without a corresponding benefit to our own banks. Domestic banks would need to raise more capital to be able to address its soundness as well to provide updated technology and equipment to be competitive with the multinational finance investors. It is expected that there will be ore reports to be submitted and more work for banks to comply with the international standards and transparency in financial reporting. (Banker interviewees, Anglo, J., Rodil, D., Tungol, N., Vichuaco, A., 2004)

The insurance industry for one still needs to address its own problems before it can enter into a free trade agreement with the U.S. Right now, it is having trouble in the policing the industry and the remittance of taxes. (Abraham, Babanto, Jao, Kuon, Pabayos, 2004).

Like the domestic banks, the local insurance companies like us might be eliminated in the process, for our share in the local market will be taken by the investors. (Aquino,B., Castillo,A., Leobrera, R., Mago, D., Ponce, C., Retuya, A., 2004).

American insurance companies are already doing business in the Philippines. However, because of the economic difficulties here, some of them folded up or merged with other insurance companies as discussed earlier. Also, the effect of the 9/11 event is that the cost of reinsurance is higher. There would be more difficulty for small capitalized local players to compete with the largely capitalized foreign players. What the local players are doing now is to do business among its Asian counterparts since it is easier and more profitable. (Insurance interviewee, 2004). Another key informant from the insurance industry stated that no foreign insurance company who wants to dominate the industry can be successful, for the market now is saturated and cannot be penetrated by new players. People still trust the established names in the industry. (Aquino,B., Castillo, A., Leobrera, R., Mago, D., Ponce, C., Retuya, A., 2004).

However, some Philippine insurers find liberalization counter-productive to the industry if the differences in the taxation of local life insurance companies vis-à-vis foreign-based companies is not addressed. The trend towards eliminating trade barriers, such as taxes, among nations and promoting global competitiveness posed increased concerns for the Philippine life insurance industry. The implications for the life insurance sector of the repeal of the uniform currency act further emphasize the dire need for urgent action on the tax treatment of the life insurance industry. (Philippine Life Insurance Association.htm, 2004, Retrieved Date July 14, 2004).

Starting March 2004, a BIR memo rationalized the imposition of Documentary Stamp Tax (DST) on all financial institutions. In summary, the basis of DST computation on life insurance companies in now on the premium no longer on the amount of insurance. The effect is lower insurance premium. There was no change in

non-life insurance premium. PLIA is pushing further to amend this law and make it a one-time tax.

As for the stock market, the concern of the trading participants and investors is the liquidity and depth of the market. The entry of more American funds can help provide more liquidity in the market. A concern of investors is the political news, bulging deficit that continues to hound the market. Any negative news would send the foreign investors out of the market. Daniel Yu, editor-in-chief of Hong Kong-based The Asset Magazine, said “continuity and stability are factors astute foreign investors look for when investing in a country.” ([www.bsp.gov.ph](http://www.bsp.gov.ph), Retrieved date: October 23, 2004). Likewise, since there is a low demand for securities, the entry of American trading participants can dent the market share of the local counterparts.

Globalization remains a debatable issue confronting Philippine financial services industry. There is a need for government to install effective safety nets and protective measures that will enhance the capacity of domestic players to compete globally. Insufficient financial muscle and technological capability, a high tax burden and inefficient bureaucracy continue to hamper efforts by locals to match global players head-on.

The United States has successfully completed negotiations for free trade agreements (FTAs) with its two leading trading partners, Chile and Singapore. The House approved free-trade accords with Singapore and Chile under new fast track rules. These agreements would promote US commitment to trade liberalization and open opportunities through openness, respect for the rule of law and private property and should result in increased access to markets outside of the US. In addition, they will play a huge role in ensuring that the US maintains its leadership role in world trade.

However, since the US has initiated the Enterprise Asean Initiative (EAI) where the US and individual Asean countries can explore the possibilities of launching FTA negotiations, then such agreement should be beneficial to both parties and not placing at a disadvantaged one country.

The following is a matrix of the Free trade Agreements (FTAs) of the United States with Singapore and Chile, respectively. Also, existing regulations on liberalization for the Philippine Financial Services are presented. It is intended to find out what exists already and how this can be used/enhanced in the proposed RP-US FTA.

For the two separately concluded free trade agreements by the United States of America, the financial services chapter applied to measures adopted or maintained by the two countries that relate to the financial services, financial institutions, investors and investments of such investors in financial institutions in the Party's territory; and cross-border trade in financial services. It specifically encompassed issues on core obligations

of non-discrimination, most-favored nation treatment, and additional market access obligations.

**Table 22 Free Trade Agreements and Philippine Financial Services Liberalization, Regulations, and Developments**

| US-Singapore FTA  | US-Chile FTA   | Existing Regulations on RP Financial Services  |
|---|--|--|
| <p><b>Banking (Singapore's Perspective):</b></p> <ul style="list-style-type: none"> <li>❖ Lifting of ban on new licenses for full-service banks or for "wholesale" banks that serve only large transactions.</li> <li>❖ Ability by licensed full-service banks to offer all their services in Singapore at up to 30 locations in the first year that the agreement is in effect, and at an unlimited number of locations within two years.</li> <li>❖ Application for access to the local Automated Teller Machine (ATM) network within two-and-a half years, and branches of U.S. banks get access to the ATM network in four years</li> </ul> | <p><b>Banking and Securities (Chile's Perspective):</b></p> <ul style="list-style-type: none"> <li>❖ Establishment by U.S. banks and securities firms of branches and subsidiaries and may invest in local firms without restriction</li> <li>❖ U.S. financial institutions may tap privatized voluntary savings plans by offering services.</li> <li>❖ U.S. firms also gain some increased ability to offer such products through Chile's mandatory social security system.</li> <li>❖ Cross-border services in financial information and data processing, and financial advisory services with a limited exception.</li> <li>❖ Chilean mutual funds may use foreign-based portfolio managers.</li> </ul> | <p><b>Foreign banks liberalization</b></p> <p>Philippines has allowed only 10 foreign banks to join the banking industry</p> <p><i>On-going review of the respective charters of the Bangko Sentral ng Pilipinas (BSP) and of the Philippine Deposit Insurance Corporation (PDIC) where we are pushing for more reforms to strengthen our bank regulatory powers and improve legal protection of bank supervisors as well as to expedite problem bank resolution.</i></p> <p>Amendments to the Bangko Sentral ng Pilipinas charter:</p> <ol style="list-style-type: none"> <li>1. Strengthening of supervisory powers</li> <li>2. Immunity to examiners</li> <li>3. Liquidity, insolvency— wanted more powers; require Stockholders additional capital; failure to do so--- ability to merge or be bought out</li> </ol> |

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|--|--|---|
|  |  | <p>4. Increase scale of penalties</p> <p>General Banking Law<br/>There is no need to have an amendment in the General Banking Law (GBL). The amendment in BSP charter in line with GBL.</p> <p>International Capital Standards (Basel 1 and Basel 2 Accord)<br/>International Accounting Standards and Transparency</p> <p>Anti-Money Laundering Act</p>  |
| <p><b>Insurance:</b></p> <p>Under the FTA, U.S. insurance firms will be able to establish subsidiaries, branches or joint ventures</p> <p>Singapore is expanding the cross-border insurance services it allows, and U.S. firms will be able to sell marine, aviation and transport (MAT) insurance, reinsurance, to provide insurance brokerage of reinsurance and MAT insurance, and to provide insurance auxiliary services.</p> <p>A new principle of expedited availability of insurance services in the FTA means that prior regulatory product approval will not be required for all</p> | <p><b>Insurance</b></p> <ul style="list-style-type: none"> <li>❖ U.S. insurance firms would gain full rights to establish subsidiaries or joint ventures for all insurance sectors (life, non-life, reinsurance, brokerage) with limited exceptions.</li> <li>❖ Chile has committed to phase in insurance branching rights. Chile further has committed to modify its legislation to allow cross-border supply of key insurance sectors such as marine, aviation and transport (MAT) insurance, insurance brokerage of reinsurance and MAT insurance, and has confirmed existing rights for reinsurance. A new principle of expedited</li> </ul> | <p><b>Insurance</b></p> <p><b>Liberalization</b><br/>Insurance is fully liberalized.</p> <p>A foreign insurance or reinsurance company or intermediary was allowed entry under one of the following modes: ownership of the voting stock of an existing domestic insurance or reinsurance incorporated in the Philippines; investment in new insurance or reinsurance company or intermediary incorporated in the Philippines; or establishment for a branch, but not for an intermediary. To qualify for entry, the companies had to belong to the top</p> |

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|---|--|--|
| <p>insurance products other than life insurance, Central Provident Fund related products, and investment-linked products sold to the business community. Expedited procedures will be available in other cases when prior product approval is necessary. The FTA specifies that U.S. financial institutions may offer financial services to citizens participating in Singapore's privatized social security system under more liberal requirements.</p>  | <p>availability of insurance services means that the parties recognize the importance of developing and maintaining regulatory procedures to expedite the offering of insurance services by licensed suppliers.</p>  | <p>200 foreign insurance or reinsurance or intermediaries in the world or among the top 10 in their country of origin, and had been in the business for at least 10 years. The regulatory framework governing the insurance industry was marked by conservatism and risk aversion. Although this resulted in overall financial soundness, it was also seen as overly cautious therefore constrained the growth and development of the sector</p>   |
| <p><b>Securities and Related Financial Services:</b></p> <p>The FTA specifies that U.S. firms may provide asset/portfolio management and securities services in Singapore through the establishment of a local office, or by acquisition of local firms.</p> <p>In addition, U.S. firms may supply pension services under Singapore's privatized social security system, with liberalized requirements regarding the number of portfolio managers that must be located in Singapore. And U.S.-based firms may sell portfolio management services via a related institution in Singapore. Under the FTA,</p> | <p><b>Securities and Related Financial Services</b></p> <ul style="list-style-type: none"> <li>❖ U.S. banks and securities firms may establish branches and subsidiaries and may invest in local firms without restriction, except in very limited circumstances.</li> <li>❖ U.S. financial institutions may offer financial services to citizens participating in Chile's highly successful privatized voluntary savings plans. U.S. firms also gain some increased ability to offer such products through Chile's mandatory social security system</li> </ul> <p>- Chile will allow U.S.-based firms to offer services cross-border to Chileans in areas</p> | <p><b>Securities and Related Financial Services</b></p> <ul style="list-style-type: none"> <li>❖ Securities Regulation Code Of 2000 provided <ol style="list-style-type: none"> <li>1) more stringent requirements on full disclosure;</li> <li>2) appointment of independent directors;</li> <li>3) put a code of corporate governance in place. This is intended to better protect minority shareholders.</li> </ol> </li> </ul> <p>-SEC was reorganized with salaries upgraded and its mandate focused more on its role as market regulator with additional enforcement powers.</p> <p>- Demutualization of the</p> |

|   |  |   |
|---|--|---|
| <p>Singapore will treat U.S. firms the same as local firms for the cross-border supply of financial information, advisory and data processing services.</p> | <p>such as financial information and data processing, and financial advisory services with a limited exception. Chilean mutual funds may use foreign-based portfolio managers.</p> | <p>PSE provided Independent and professional management group in majority in place.</p> <p>DST has been abolished/reduced at the trading floor of the PSE to perk up volume of trade.</p> <p>The BSP and SEC introduced capital market reforms/governance to ensure transparency in the market governing body. Three broad areas for reform: the legal and regulatory framework, market infrastructure and the quality of financial institutions.</p> |
|---|--|---|

Sources: [www.ustr.gov](http://www.ustr.gov) . Free Trade With Chile Summary of the U.S.-Chile Free Trade Agreement. Retrieved date July 30,2004.

Scoop FT Agreements US, Chile, Singapore Comprehensive.htm. Retrieved date July 30, 2004.

[www.bsp.gov.ph](http://www.bsp.gov.ph) Retrieved date July 30, 2004.

[www.sec.com.ph](http://www.sec.com.ph) Retrieved date July 30, 2004.

## **The US-Chile FTA**

### **The reasons for signing the FTA**

From the US point of view, the agreement is expected to improve opportunities for US exports, growth and investment. The agreement will ensure duty-free treatment of both US and Chile goods traded by the countries' respective industries. Most tariffs will be eliminated within the first 4 years of the agreement and the remaining tariffs and quotas will be eliminated over a 12-year period. Other issues targeted include market access in the services sector and certain groundbreaking customs procedures and transparency requirements that will promote efficiency and fairness. (The US-Chile, US-Singapore and US-SACU FTAs.htm. Retrieved date: June 12, 2005).



From the Chilean perspective the agreement will consolidate and expand access for the country's products to principal international economies, facilitate diversifying exports and clarify the ground rules for participating in trade. This will lead to a reduction in the external vulnerability of the Chilean economy in times of enormous financial turbulence. The Chilean government believes that the agreement will potentially increase the productivity of the country's enterprises. FTAs are also an integral part of the country's economic development projects and will thus prove pivotal to the successful implementation of the country's Pro-Growth agenda. The terms of the agreement should also indirectly benefit its principal beneficiaries in the manufacturing sector that utilize the most labor and technology in their products. (The US-Chile, US-Singapore and US-SACU FTAs.htm. Retrieved date: June 12, 2005).

### **US-Singapore FTA**

The highlights of the US-Singapore FTA on financial services included the market access for financial institutions and national treatment. It also included securities and insurance and most favored nation treatment.

The agreement is aimed at achieving great economic benefits for US companies in financial services, intellectual property and copyright and manufacturing in the electronics sector. (The US-Chile, US-Singapore and US-SACU FTAs.htm. Retrieved date: June 12, 2005).

Firstly, in the services sector, Singapore will be required to lower restrictions on the use of ATM services preventing US banks operating in Singapore from offering ATM services connected to the home-based banks. This is currently a severe competitive disadvantage for the US banks. (The US-Chile, US-Singapore and US-SACU FTAs.htm. Retrieved date: June 12, 2005).

Secondly, the agreement guarantees that the procurement policies of the "government-linked corporations" will not discriminate against US companies, as these corporations will be expected to act as commercial entities and not to engage in "anti-competitive behavior". If a dispute arises it will be referred to the dispute settling body established by the FTA. As a result of the agreement it may be necessary to strengthen competitions policy in Singapore, in order to protect businesses from anti-competitive behavior. (The US-Chile, US-Singapore and US-SACU FTAs.htm. Retrieved date: June 12, 2005).

The most significant economic aspect of the agreement is likely to be the provision allowing products assembled outside Singapore in two Indonesian out-islands to be counted as Singaporean in origin for the purposes of the FTA. This would allow US electronics manufacturers to take advantage of low wage rates on those islands and incorporate components manufactured there into electronic products that can enter the US duty-free. (The US-Chile, US-Singapore and US-SACU FTAs.htm. Retrieved date: June 12, 2005).

From the point of view of Singapore one of the most significant benefits will be increased US investment due to the phasing out of duties on 90 US tariff lines. Currently, 52% of Singaporean exports are from US multinational corporations. (The US-Chile, US-Singapore and US-SACU FTAs.htm. Retrieved date: June 12, 2005).

In summary, the FTA covers a wide range of topical issues from market access, telecommunications and services to product-specific rules of origin. And as a result of the US commitment to increase trade relations through FTAs, it is expected that this agreement may lead other Southeast Asian countries to pursue trade agreements with the US, thereby promoting the interests of global trade throughout the region. (The US-Chile, US-Singapore and US-SACU FTAs.htm. Retrieved date: June 12, 2005).

The FTAs that the US has with Chile and Singapore covers a wide range of issues from modes of supply, market access, telecommunications, financial services, agricultural, intellectual property rights. Both the US-Chile and US-Singapore FTAs are in keeping with the US trade policy to promote global free trade.

These FTAs have product specific rules of origins. The US in pursuing FTAs under the EAI commits to increase trade relations thus promoting interests of global trade.

It is apparent that Chile and Singapore have opened their financial markets for the United States. Particularly with Chile, they signed the FTA and eventually, had capital market reforms to anchor the success of the FTA. With the Philippines, financial liberalization concentrated on both the insurance and banking industries. Initially, only 10 from each industry were allowed following the modes of entry. However, as mentioned earlier, foreign banks have contributed little to the banking industry, while foreign insurers dominate the life insurance market.

The RP-US FTA can be leveraged to promote bilateral initiatives to liberalize trade and investments. It can bring tangible commercial benefits to US and Philippine corporation. We can have an agreement that is comprehensive in scope and fully consistent with the World Trade Organization (WTO) and General Agreement in Trade and Services (GATS) frameworks for liberalized trade. The FTA should not only economically benefit the US. The Philippines should be able to also have economic gains particularly in the exports market.

An issue is on market access of Philippine financial services providers in the US and also of American financial services providers in the Philippines. Since the Philippines has liberalized banking and insurance industries, market access for American firms should not be much of a problem. The entry of these firms should bring more investment opportunities to the Philippine financial services industry. A question remains is if these American companies are willing to invest in the Philippines given our political and economic problems.

## **6.1 Specific Provisions of RP-US FTA in Financial Services Industry**

### **6.1.1 Negotiating Points for the RP-US FTA**

In negotiating for the FTA, the Philippines must be globally competitive first. The reforms further needed to make the Philippines globally competitive in the financial services industry include the 5<sup>th</sup> protocol in WTO which have not yet been ratified but we are compliant specially in insurance and banking in terms of ownership. (Go, 2004; DOF interviewee, 2004).

Second, regulatory agencies must be in proper agencies and be efficient in initiating changes that would try to bring back sectors that are left out (Go, 2004; DOF interviewee, 2004). For the agreement to work effectively, the Bangko Sentral ng Pilipinas (BSP), the country's regulatory and supervising bank must work autonomously from the government. The exercise of its functions and duties of the BSP as well as other government supervising agencies, like Insurance Commission and the Security and Exchange Commission must be free from the influence of politics and must ensure free competition among the players. The government must stick to its laws and business policies and must be free from corruption to assure the foreign investors of a reliable governing body. (Banker interviewee, 2004; Anglo, Rodil, Tungol, Vichuaco, 2004).

Third, we need to strengthen SME's within the ASEAN region because this sector shows potential growth. (Go, 2004; DOF interviewee, 2004).

Any FTA negotiation between the two countries should have in mind the enhancement of key services between them, the assurance of fair and non-discriminatory treatment of trade, cost and time savings through streamlined procedures, mutual recognition of each countries' constraints, and to the best extent practicable, the reduction or elimination of tariffs. (Banker interviewee, 2004).

With a possible FTA with the US, the Philippines can review the FTAs of the US with Chile and Singapore, respectively. These FTAs can be used as the framework for our purposes, policies and objectives. "The TPA Act or the Bipartisan Trade Promotion Authority ACT sets out a range of :overall trade negotiating objectives." This is what the US used to defined their objectives in conducting their free trade agreements. The Philippines would most likely adopt the same Act. The Act calls for future US trade agreements to : (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities; (2) further strengthening international trading disciplines, (3) foster economic growth in the United States and globally, and (4) promote environmental and worker rights policies in the context of trade." (Co,S., Cristobal, Ma. T., Imperial, E., Princesa, M., Tayag, L. 2004).

The strategies for negotiation for the RP-US FTA in financial services industry would include specific proposals that the Philippine negotiators can discuss with their

American counterparts. Both negotiating teams may use the modes of supply for the specific financial services, namely banking, securities market and insurance.

Cross border transactions should give positive effects on investments and trades since it will eliminate barriers. Both countries should be able to increase their markets since they will be able to reach investors, in this case through the internet.

Consumption abroad refers to requires the movement of the consumer to the country of the supplier. How can this mode of supply be availed of by foreign investors or customers both in the Philippines and in the United States, As discussed earlier, both countries can do so by expanding the financial services provided and the investment alternatives that can be made available for the consumers to choose from. However, what are the legal implications that have to be considered to be able to avail of such services. Are both countries willing to have the same agreements given to Chile and Singapore?

Commercial presence- is defined as a service supplier of one Member, through commercial presence, in the territory of any other Member.

The financial services company establishes an office or has presence of commercial facilities in the host country in order to render service related to its activities. Both negotiating team should review the laws on liberalization. In the case of the Philippines, since the banking and insurance sectors are deemed fully liberalized, what will they have to offer to their American counterparts. In the same manner, what laws are to be applied for the Philippine financial services. Will there be exceptions to the rules, laws but will not detriment the position of current players in the specific industries?

The Movement of Natural Persons It refers to the persons that travel to the host country to provide service on a temporary basis. How will this affect the current workforce of the Philippine financial services industry? Aside from employment and training, in what other areas can the workforce in the financial services of both countries benefit?

As mentioned earlier, a probable constraint that may exist in the proposed FTA is the constitutional restriction on the ownership of a foreign company which allows up to 40% direct ownership. This restriction hinders the foreign investors to gain control in the management and operation of the business in the country. (Banker interviewee, Anglo, J., Rodil, D., Tungol, N., Vichuaco, A., 2004). Is the Philippines ready to rescind this restriction in order to be able to accommodate what its US counterparts will ask for. The strategies for negotiation of the proposed RP-US FTA for financial services should promote the welfare of Philippine investments and trade, development of new products, upgrade technology.

In the proposed RP-US FTA, the US would like to embed political accommodations on this FTA. There are no specific accommodations because we don't have the capacity to state this since the US is the number one trading partner . The US

will try to sweeten the offers but still have political strategies inside it. (DOF interviewee, 2004).

Another constraint is that the Philippines does not have enough market in banking and insurance compared with Singapore and Hong Kong. They are established already and we are not that strong because they don't have agricultural industry so almost all resources or focus are into financial. (DOF interviewee, 2004).

To summarize, our key informants opined that there are a lot of advantages for the RP-US FTA for our Philippine Financial services. These includes: 1) upgrading technological capabilities; 2) Infusion of new investment into capital market ;3) Improvement in trade and settlement infrastructure Improvement in information system through knowledge and technological transfer. The disadvantages would be deterioration of market share of local players; need to increase capitalization.

Issues that need to be addressed are: 1) autonomy among key government offices; 2) harmonize taxes; 3) lift limits to ownership; 4) Deepen local and international capabilities.

The proposed FTA may initially disadvantaged local firms and that they cannot compete with the foreign firms. However, if they increase their capital through new infusion or mergers and acquisitions, they maybe able to compete directly with these foreign firms. However, since the United States of America is our number one trading partner, that leaves us with lesser bargaining power in the negotiation.

## **7. Economic Benefits that the Philippines can Derive from a Financial services FTA with the US**

The Republic of the Philippines and United States of America negotiations for the proposed FTA on financial services include three broad categories, namely, banking services, securities and insurance. Banking includes all types of traditional services provided by banks such as acceptances of deposits, lending of all types, payments and money transmission services.

The word economic benefit can provide various meanings and is subject to various interpretations. From the standpoint of the Philippine Government, economic benefits accruing to the RP-USFTA can be described in the following context:

### **1. The relative importance of each country as a trading partner based on current trade patterns**

Like trade in goods, trade in services can boost and provide positive effect on income and wealth of the two countries into the bilateral arrangement. While these transactions are coursed through proper channel of distribution, liberalization of trade will make the financial services sector more efficient in the delivery of service through competition and provision of more and varied financial related services. Increases in trade and investments that flow between the two countries will lead to financial service providers' giving quality services to its existing and prospective clients.

This enhances transfer of technical know-how or financial expertise among its constituents. The United States of America can provide the lead or help the Philippines in develop various financial products from derivatives trading to provision and transfer of financial information, and provision of advisory and other auxiliary services.

Table 23

Cumulative Foreign Equity Investments by Investor Country  
for the Period 2001-2003

| <b>Country</b> | <b>2001</b> | <b>2002</b> | <b>2003</b> |
|----------------|-------------|-------------|-------------|
| United States  | 3,245       | 3,300       | 3,525       |
| Japan          | 2,753       | 3,508       | 3,672       |
| Netherlands    | 1,617       | 1,743       | 1,919       |
| Switzerland    | 901         | 901         | 912         |
| Singapore      | 858         | 902         | 1,002       |
| United Kingdom | 836         | 849         | 856         |
| Hongkong       | 768         | 829         | 830         |
| Virgin Islands | 402         | 534         | 535         |
| Bermuda        | 273         | 273         | 276         |
| Germany        | 256         | 260         | 657         |
| France         | 108         | 137         | 489         |

Aside from the trade balances shown in Table 12 between U.S and Philippines, U.S and Chile and U.S. and Singapore. Table above reveals the Equity Investments in the Philippines by Investor Country for three (3) years.

As can be gleaned from the table, the United States is still the number one investor in the Philippines as far equity investment is concerned. While its transactions increased from 2001 to 2003, it was even surpassed by Japan from 2002 to 2003, hence higher than the equity investments made by companies in Netherlands. The reduction in the equity investments by the United States can be attributed to the declining comparative advantages over its neighboring countries and the increasing trade activities by American firms in China and Vietnam.

Hence, it must be noted that the Philippines is already losing its popularity in the United States market due to political uncertainties, insurgencies, corruption, slow fiscal policies compared to its neighboring countries. Today, China and Vietnam are considered as alternative trading partner for the Philippines in certain products, especially that the United States had already entered into bilateral arrangements with these two countries. Unless the Philippines will act promptly to address this problems, it will completely suffer from losing the battle in the international arena.

## **2. Both Countries may Benefit from Greater Transparency in the Regulatory System**

The Philippines and the United States of America may derive economic benefits in the free trade agreement as both countries will strive to have more transparent Regulatory System. To date, the Philippines had already prepared itself in having a strong and sound regulatory body that keeps abreast to meet international standards. Like the United States of America, it continuously improves its laws to provide safe and sound banking practices. Its move towards mergers and consolidation among banks can be seen as disincentive towards FTA as no additional bank branch, whether local or foreign shall be established in the near future. Thus, the MFN clause that may be used by the United States in its negotiations with the Philippines might be disregarded; unless it will give in to the U.S. request for horizontal commitments under the MFN clause.

In the previous discussion, the profile of the banking industry was introduced and the impact of foreign bank entry. While foreign banks represent 46 percent of the commercial banking industry, their share in the total assets of the commercial banking industry only represent a measly of 15% while 13.5% in the total banking industry's total resources. Hence, their presence still do not undermine the concern of the country in safeguarding the safety and soundness of the banking industry as embodied in the Foreign Bank Deregulations Act.

The Bangko Sentral ng Pilipinas, together with the Department of Finance and Securities and Exchange Commission always establish policies and guidelines that serve to protect the local banking industry, particularly the small weak banks. If the Free Trade Agreement results to providing special treatment under the proposed bilateral arrangement, then the same must be made in the interest of the general public.

Furthermore, The deliberate move by BSP can be seen as a positive response in its commitment to liberalized the financial environment that meets best international practices and standards. With this, the country can keep its position at pace with other countries within the region and worldwide by considering the risks of financial instruments that are existing in the portfolios of the banks, coupled by the government's goal of ensuring soundness in the bank's management practices to mitigate risks. This is obviously in line with the risk management activities and the move towards Corporate Governance after the Asian Financial Crisis.

### **3. Market Access by Binding Liberalization**

National Treatment is defined as treatment no less favorable than that accorded to the domestic homologues. As can be seen in the Free Trade Agreements entered into by the United States of America, it had inscribed certain limitations on National treatment in its schedule of Specific Commitments to the counterparty with respect to the four (4) modes of supply as in the case of market access provisions.

As discussed in the implications of the modes of supply, particularly where commercial presence is becomes top of the line issue, the Philippine banks that establish their branches abroad faces problems regarding the insurability of the deposits that they solicit. This poses a threat for the foreign bank branch as it reduces its market share that is enjoyed by the local banks. Moreover, its subjectivity to differing interstate policies on the establishment of a foreign bank puts the Philippine bank to a disadvantage.

Most of the modes of access in opening up a foreign bank in the US are considered as very restrictive compared to those that provided in the General Banking Act of 2000 and Foreign Bank Liberalization Act of 1994, where national treatment and market access are accorded with utmost diligence that clearly defines and spells out liberalization.

It is hope that the FTA will bring about favorable negotiations to market access for both countries.

### **4. Provision for Systematic Process in Negotiating Further Liberalization Within the FTA**

It must be noted that the degree of liberalization in the financial services sector will depend on the nature and the extent of the specific commitments that will be made by the two countries to the FTA. The presence of request-offer negotiations cannot be eliminated which sometimes allows compromise in one area to be negotiated against liberalization in another area in the counterparty's market. In fact, one of the most sensitive aspects in the FTA is the financial services sector as it serves as a catalyst towards development of one country.

Unlike trade in other services, any wrong decisions that will be made by either party can eventually undermine the benefits that can be derived thereto. The Philippines' experience in bilateral and multilateral arrangements, it shows that it had not entered into bilateral arrangement that considered commitments on financial services. One of the biggest move that it had entered into that considered was its commitment to ASEAN Framework Agreement on Services where it signed in the Protocol to the Second Package of Commitment on Financial Services in 1995. <http://www.aseansec.org/pdf/fin1.pdf#search='GATS%20MODES%20OF%20SUPPLY>



Of course, the costs and benefits thereto were already weighed and considered by the Philippine government. In the case of banking, the opening up of the system to foreign bank entry had been viewed positively and negatively by the industry. Thus, losses as a result of adverse effect on bank efficiency and competitiveness may impose a higher cost on the part of the government as a result of the liberalization.

In fact, the adoption of economic reforms and the implementation of new laws that will serve to protect the interests of the banks and the banking public may just exacerbate the situation. This only means that there is no guarantee that free trade agreement will favor the welfare of the local banking industry that is highly considered in spurring economic growth and development.

In this context, will the Philippine government increase the scope of liberalization in due time as it starts its negotiation with the US government for a possible free trade agreement? As can be learned from the lessons of emerging economies, they started with free trade agreement with other countries. The FTAs undertaken by Singapore, Chile and China are good examples of liberalization that the country can embark or follow.

## **5. Access to Capital and Market Liquidity**

Investment uncertainties, brought about by the perceived country risks, political instability, slow fiscal and economic reforms by the Philippine government can act as deterrent for foreign investments, either direct or portfolio. This serves as a tax in the eyes of the prospective investors, thereby affecting its required rate of return on investments. This will then affect the cost of capital for the publicly listed companies which will in turn affect liquidity not only in the equities market but also in the debt market.

In terms of its financial services sector, the Philippines cannot do much about by allowing more bank branches to be established in the near future. The only way that a more relaxed benefit to the United States can be acquired by newly established bank branches by way of increasing the number of branches that they can operate. In fact, when they are compared by foreign bank subsidiaries, they can operate a bank as many as 73 branches and 55 branches for Maybank and United Overseas Bank, respectively. This is because they are not covered under the foreign bank liberalization act. The other alternative open to the American Banks is to establish any form of thrift bank.

## 6. Sectoral Issues

For financial services sector in particular, the FTA should recognize the need to have clear procedures, transparency, governance and harmonization of standards. The Philippines still has to meet all the requirements of BASLE I and II and comply to the new international accounting standards. The Philippines should be able to provide the groundwork for the introduction of innovative products, and allow participation by financial services sector in asset management in the international arena.

## 8 POLICY RECOMMENDATIONS IN THE PROPOSED RP-US FTA IN FINANCIAL SERVICES

Based on the earlier discussions, the RP-US FTA can bring in economic benefits but at the same have negative consequences to the financial services industry. The negotiating panel can adopt the following policy recommendations:

**GATS framework for the RP-US FTA.** The RP-US panels has to establish specific provisions in the financial services industry under the proposed RP-US FTA. As discussed earlier, it can use the GATS framework in negotiating specific provisions for the financial services industry. In the modes of supply under the GATS, it is expected that the investments of both countries will increase. Although, there should be safety nets provided by the Philippine government when further liberalization is allowed in the Philippine financial services industry.

For all the sectors, banking, insurance, and stock market, a concern is that the FTA may probably create a non-proportionate number of foreign and domestic players. Foreign countries may freely enter the country since they can afford the capitalization needed in order to expand their services. Local financial services providers may need to merge to be able to compete, increase capitalization. How can the Philippine financial services providers safeguard its businesses? The Philippines can look at the lessons in the safety nets provided by Chile when it introduced capital market reforms.

**Reforms in the Capital Market and Governance.** The BSP and SEC should continue with its capital market reforms/governance to ensure transparency in the market governing body. Our key informant from the DOF said that we can deepen the capital markets by harmonizing accounting, practices and taxes and develop regional bond market with ASEAN. We need to develop bond within the ASEAN first specifically with China, Japan and Korea. Also, we can look at the capital market reforms made by Chile and use this a framework for furthering our capital market reforms. The same issue has been raised in the insurance industry. What the local players in the life insurance industry is suggesting is that for them to have closer relationships with their Asian counterparts to be able to match the capitalization of the bigger American insurance companies.

For financial services sector in particular, the FTA should recognize the need to have clear procedures, transparency, governance and harmonization of standards. The Philippines should be able to provide the groundwork for the introduction of innovative products, and allow participation by financial services sector in asset management in the international arena.

In 2001, the Chilean Congress approved a new set of economic reforms to increase liquidity of capital markets and to foster the growth and diversification of the financial sector. The Capital Market Reform seeks to increase the effectiveness and accessibility of Chile's Capital Markets, provide more incentives and alternatives for personal savings, and generate greater financing for new products by introducing tax incentives and simpler regulations. The reform also encourages the creation of an emerging companies' stock market, addresses the taxation of cross-border bank lending and overseas institutional investors, and facilitates insurance industry, mutual fund and investment fund deregulation. ([http://www.chileuseafta.com/bakcgrounders/bgs\\_financial-framework.html](http://www.chileuseafta.com/bakcgrounders/bgs_financial-framework.html). Retrieved date: June 28, 2004).

**Review of Philippine financial law and the Philippine Constitution.** The regulatory body must reduce the volume and complexity. There is much to be done for the success of the law. Hence, the government must review its laws on financial services which seek to serve as a mechanism to increase access to Philippine markets for the United States by reducing onerous regulations and burdensome government policies. To apply reciprocity and have a bargaining power during the FTA negotiations, the government must review possible opportunities which will open markets for both countries that will provide a long-term benefit in the future. The bilateral arrangement can offer liberalization of trade which will make the financial services sector more efficient in the delivery of service through competition and provision of more and varied financial related services. Increases in trade and investments that flow between the two countries will lead to financial service providers' giving quality services to its existing and prospective clients.

### **Legal and regulatory framework particularly laws on taxation and corporate rehabilitation/recovery**

The negotiating panels can discuss on possible tax treaties. At present, Philippine financial services providers find that they are heavily taxed and the tax rate for them and foreign providers are different. The foreign providers have more tax incentives.

Also, what are the opportunities to given to American firms interested in corporate rehabilitation or recovery? What laws are to be amended? If they are able to rehabilitate ailing companies, how much economic benefits will they be bringing in the country?

In the case of the US, what laws are to be applied for the Philippine financial services providers under the modes of supply? How can the Philippines compete with their American counterparts in the US? The Philippine negotiators can also for ask for provisions that will ensure the viability of the Philippine financial services providers.

There should be a provision for systematic process in negotiating further liberalization within the FTA. It must be noted that the degree of liberalization in the financial services sector will depend on the nature and the extent of the specific commitments that will be made by the two countries to the FTA. The presence of request-offer negotiations cannot be eliminated which sometimes allows compromise in one area to be negotiated against liberalization in another area in the counterparty's market. In fact, one of the most sensitive aspects in the FTA is the financial services sector as it serves as a catalyst towards development of one country.

**Enhancement of Key services.** Any FTA negotiation between the two countries should have in mind the enhancement of key services between them, the assurance of fair and non-discriminatory treatment of trade, cost and time savings through streamlined procedures, mutual recognition of each countries' constraints, and to the best extent practicable, the reduction or elimination of tariffs. An issue is on what economic benefits will the FTA bring to both RP and US? When Chile and Singapore signed the FTAs with the US respectively, there were contextual issues primarily on projected exports and imports trade to show how each country will benefit.

With a possible FTA with the US, the Philippines can review the FTAs of the US with Chile and Singapore, respectively. These FTAs can be used as the framework for our purposes, policies and objectives. In these agreements, the purposes were to (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities; (2) further strengthening international trading disciplines, (3) foster economic growth in the United States and globally, and (4) promote environmental and worker rights policies in the context of trade. However, a question that is to be raised is the foreign ownership constraint based on the Philippine Constitution. How do we reconcile the specific provisions of the FTA with regards to financial services without violating the Philippine Constitution.

To conclude, the proposed Free trade agreement is expected to bring in more investments to the Philippines, improved services, upgrade technology. However, even without the free trade, we already have the financial liberalization but foreign firms get out of the country as soon as there is a perceived political unrest. Thus, the contribution of foreign banks to the banking sector is only 12%. Although, the life insurers are dominated by foreign firms, led by Philam Life. For the stock market, there are only two American trading participant, Citicorp, N.A. and JP Morgan Securities, both in inactive status.

In negotiating the FTA, a question here is the extent of market access of for the United States. In the recent US Singapore FTA, the U.S. relationship with Singapore

extends beyond business into the arena of security. Singapore is among America's most reliable friends in Southeast Asia. The same can also be said for the Philippines. When we negotiate for financial services under the proposed FTA, there will be an underlying political and security issues that the United States would push for. We have to make sure that our Philippine Constitution, laws are followed and any amendments should be presented to the public.

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