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Page: 1/12

Committee on Regional Trade Agreements

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**FREE TRADE AGREEMENT BETWEEN THE EFTA STATES (ICELAND, LIECHTENSTEIN,
NORWAY AND SWITZERLAND), AND THE PHILIPPINES
(GOODS AND SERVICES)**

QUESTIONS AND REPLIES

The following communication, dated 30 October 2020, is being circulated at the request of the delegations of the EFTA States (Iceland, Liechtenstein, Norway and Switzerland), and the Philippines.

Questions from the delegation of Canada

Sanitary and phytosanitary measures

1.1. Paragraph 3.50 states: "The Agreement contains rules on consultations (Article 4.10). The Parties further agree, that no later than two years from the entry into force of the Agreement, and thereafter upon request by a Party, a joint review of Chapter 4 shall take place with a view to extending to the Parties treatment granted to a third-party, with whom all Parties have established arrangements concerning SPS regulations (Article 4.11)."

- a. Canada would be interested in knowing whether any issues subject to consultations have been referred to dispute settlement.**

Joint response from the Parties

There have been no issues among the Parties which were subjected to consultations; thus, the dispute settlement mechanism was never invoked.

- b. Canada would be interested in knowing if Parties can share their experiences with implementing Article 4.11 of the Agreement and any outcomes arising the joint reviews.**

Joint response from the Parties

No experiences can be shared yet as a joint review. The joint review should be prompted by a request from a Party.

1.2. Paragraph 5.16 states, in part: "[...]It provides for disciplines on transparency in the publication of laws and regulations, judicial decisions and administrative rulings of general application as well as international agreements to which the Parties are party that may affect their procurement markets (Article 9.1)."

Is there a mechanism in place for reviewing or enforcing transparency as described here?

Joint response from the Parties

Clarification: Is Canada asking whether above transparency mechanism in Article 9.1 on Government Procurement exists in the SPS Chapter? If yes, the answer is:

The transparency obligation in the Government Procurement Chapter of this FTA is likely patterned after the WTO GPA and is different from that of the WTO SPS Agreement. The Philippines-EFTA SPS Chapter uses the review and transparency mechanism under the WTO SPS Agreement.

Government procurement

1.3. Paragraph 5.16 states, in part: "[...]Moreover, if a Party grants to a third-party additional benefit to access its procurement market after the entry into force of the Agreement, it shall without delay, notify the other Parties. The Party granting additional benefits shall, upon request by another Party, enter into negotiations to extend similar benefits to the other Parties on a reciprocal basis (Article 9.2)."

Has any Party entered into negotiations to "extend similar benefits to the other Parties on a reciprocal basis" as a consequence of their granting a third-party additional access to its procurement market? How would this requirement be enforced?

Joint response from the Parties

The Philippines has not entered into any negotiation to "extend similar benefits to the other Parties on a reciprocal basis" as a consequence of their granting a third-party additional access to its procurement market.

Article 9.2 has a similar provision in the Philippines-Japan Economic Partnership Agreement, thus:

Chapter 11 Government Procurement

...

Article 132 Negotiations on Non-discrimination

In the event that a Party offers a non-Party any advantages of access to its government procurement market or any advantageous treatment concerning the measures regarding government procurement, the former Party shall consent to enter into negotiations with the other Party with a view to extending these advantages or advantageous treatment to the other Party.

...

Nonetheless, the Philippines has not entered into further negotiations nor has been a party to any agreement extending market access to its government procurement.

1.4. Paragraph 5.17 states: "Chapter 9 shall be reviewed, by the Joint Committee, within three years from the entry into force of the Agreement. The possibility of developing the Parties' commitments in Government procurement shall be examined (Article 9.3)."

Has the Joint Committee reviewed Chapter 9 since the signing of this agreement in 2016? If yes, what was the outcome?

Joint response from the Parties

The Joint Committee has not yet reviewed Chapter 9 since the PH-EFTA FTA signing.

1.5. Paragraph 5.18 states: "All the EFTA States are parties to the plurilateral WTO 1994 Agreement on Government Procurement (GPA) and/or the revised GPA¹ while the Philippines recently became an observer to the GPA (June 2019)."

¹ The revised GPA's entry into force is still pending for Switzerland at the time this factual presentation is being written.

Has the Philippines' new status as an observer to the GPA resulted in any increased interest on its part in pursuing accession to the GPA?

Joint response from the Parties

Yes, the Observer Status of the Philippines increased its interest in possibly pursuing accession to the GPA.

Moreover, the Philippines already espouses the GPA's objective of fair, transparent and non-discriminatory competition for purchases of goods and services by governments and embraces the broader purpose of promoting good governance, the efficient and effective management of public resources, and the attainment of best value for money in national procurement systems.

As an Observer, the Philippines has been able to participate in the Committee meetings and gain access to the Committee's working documents, which allows the Philippines to learn from the experiences of other countries as to negotiations and possible accession to the GPA.

Sustainable development, environment and labour

1.6. Section 5.10.1 – Sustainable development, environment, and labour (Chapter 11): Canada welcomes the inclusion of language on trade and environment in the EFTA-Philippines FTA. Canada understands this is a major milestone for the Philippines as it is the first time the Philippines includes such provisions.

Could the Philippines please indicate if this Agreement is representative of its approach on environment in its future FTAs?

Joint response from the Parties

The Philippines put environment as key element in our current development priorities and will be continuously included in our future international trade and national development commitments to ensure inclusive growth and sustainable development. This is rooted on the following policies the country has committed and put in place:

- **The Philippines' strong commitment to achieve the Sustainable Development Goals (SDGs) by 2030.** The Philippines recognizes the important role that international trade plays in achieving these goals, particularly on technical assistance that will help achieve more inclusive growth and poverty reduction. Most importantly, we recognize the role of trade, through agreements that mutually agreed upon, that contribute in the implementation of activities/endeavors that would make our environment cleaner and ensure that our natural resources are utilized in a more sustainable manner. As such, the Philippines continuously upholds economic development and environmental protection as interdependent and mutually supportive pillars of sustainable development and, thus strives to facilitate and promote investment and trade that contribute to sustainable development such as green technologies.
- **The Philippines' steadfast commitment to meet its obligations under the different multilateral environmental agreements (MEAs) and labor agreements to which it is Party.** The country is adopting and implementing various national environmental laws, policies, rules and regulations aimed at improving the state of the environment and natural resources. The country's ability to maintain its status as a beneficiary of the European Union's Generalised Scheme of Preferences Plus, which monitors eight core multilateral environmental agreements over the years, serves a testament to this strong commitment to contribute in the global environmental goals.

The Philippines remains committed in pursuing its obligations under the UN Framework Convention on Climate Change and the Paris Agreement, and to contribute to the global ambition of limiting warming to 1.5°C above pre-industrial levels, while prioritizing adaptation in consideration of our vulnerability. This commitment is made despite our country's meagre, at only 0.3%, contribution to the global greenhouse gas emissions. The Philippines will submit its first Nationally Determined Contribution (NDC) in support of our national development priorities on having a climate-resilient and low-carbon future.

Moreover, it may be noted that the country has already ratified eight fundamental ILO Conventions. With the growing labour force and increasing disasters and crises experienced by the country, the local economy and jobs need to be resilient and secured. Hence, the Philippines put decent work, social protection and livelihood as a priority to build back better after disaster and ensure sustainable and inclusive growth.

- **The country's aspirations and national priorities and strategies for achieving inclusive growth and sustainable and resilient development.** The Philippine Development Plan 2017-2022 – the country's blueprint for sustainable development, upon which all economic and development activities are anchored – establishes ecological integrity as a bedrock strategy for achieving the sustainable development; and will likely remain a priority in the succeeding planning cycles, as the country move towards the attainment of the country's long-term vision for 2040 of a ***strongly-rooted, comfortable and secure life for all Filipinos*** (dubbed as *AmBisyon Natin 2040*).
- **The Philippines continues to implement concrete actions towards sustainable consumption and production.** The Philippine Action Plan for Sustainable Consumption and Production (PAP4SCP) 2020-2040 intends to influence behavioural change at the national, community, and individual levels, especially in consuming and producing more green goods and services, and practicing more sustainable and climate-smart lifestyles. It specifies key strategies and programmatic actions on a) valuation of economic, social, and environmental costs and benefits of production and consumption processes, and (b) innovation and investment in green technologies and practices towards improving resource use efficiency.

Notwithstanding the foregoing, with respect to future FTAs the approach on environment would still depend on the mandate and the result of consultations. In any case, the Philippines is of the submission that for FTAs, the Trade and Sustainable Development provisions shall: (a) be based on a cooperative and dialogue-oriented approach, and not subject to arbitration procedures or rules of dispute settlement; and (b) recognize the Parties' rights to determine and establish their own levels of protection, consistent with internationally agreed standards and rules, and where market access commitments shall not be made contingent on conditions to be imposed on account of trade and sustainable development.

Questions from the delegation of the European Union

Provisions on trade in goods

Sector-specific provisions on trade in goods

Agricultural products

1.7. Paragraph 3.71, "3.71 Norway's and Switzerland's schedules of concessions to the Philippines contain specific provisions which apply to products identified as Processed Agricultural Products (PAP). For such goods the Agreement does not preclude the levying of import duties and the application of measures on exports, when such measures are intended to take account of differences in the cost of the agricultural raw materials incorporated into them. Moreover, import duties levied by the Parties, shall be based on, but not exceed, the differences between the domestic price and the world market price of the agricultural raw materials incorporated into the products concerned. Switzerland and Norway shall publish the applicable import duties for PAPs on the website of the EFTA Secretariat. In the case of Norway, and subject to the provisions set out in Section I of Annex VI, preferential treatment granted for PAPs originating in the Philippines shall be no less favourable than that accorded to the European Union."

We would be interested to know the following:

- a. in the case of Switzerland: has preferential treatment granted for PAPs originating in the Philippines received treatment less favourable than that accorded to the European Union?

Joint response from the Parties

With respect to imports, Switzerland's policy of price compensation measures consists of the levying of a duty comprising an agricultural and industrial element. The agricultural element compensates for the differences between the prices for the relevant agricultural raw material in a processed product on the domestic and on the external market. In addition to the agricultural element an industrial element is added which provides a certain industrial protection. On imports from countries with which Switzerland has concluded free trade agreements covering processed agricultural goods, the industrial element is usually not levied. Switzerland applies such a price compensation mechanism in all FTAs covering PAPs.

b. The applicable import duties for PAPs do not seem to be available on the website of the EFTA secretariat. Will they be published soon?Joint response from the Parties

The import duties can be found at <https://www.efta.int/free-trade/free-trade-agreements/pap-notifications>.

Questions from the delegation of Mexico**Provisions on Trade in Services and Investment****Liberalization commitments**

1.8. Regarding paragraph 4.17., it would be interesting to know the number and the nature, type or content of the additional commitments made by each of the States parties to the Agreement, as well who has made these commitments and, generally, during which periods such commitments are to be implemented.

Joint response from the Parties

Under its schedule of specific commitments, the Philippines inscribed additional commitments under telecommunications and maritime transport services.

Additional commitments in telecommunication services aim to provide transparency in the procedure for the allocation of spectrum for the supply of telecommunications services.

On the other hand, additional commitments made in maritime transport ensure that the following services are available for international maritime transport suppliers: pilotage; towing and tug assistance; provisioning, fueling and watering; garbage collecting and ballast water disposal; port captain's services; navigation aids; shore-based operational services essential to ship operation; emergency repair, and anchorage, berths and berthing.

The EFTA States have made a number of additional commitments beyond GATS. The note by the WTO Secretariat contains detailed tables specifying the sectors where EFTA States have gone beyond GATS and we would like to refer to those tables for an overview. There is no transition period foreseen and all commitments are effective immediately.

1.9. Paragraph 4.19. states that schedules of specific commitments will be subject to periodic review. It would be interesting to know whether there is a planned time-frame for that review and whether there is any commitment to include more sectors in the review or to improve the commitments that are already in the schedules.

Joint response from the Parties

Under Chapter 6 (Trade in Services), Article 6.18 of the Agreement provides for the review of the Schedule of Specific Commitments every two years, with the view of liberalizing trade in services. The first review shall commence no later than three years after the entry into force of the agreement.

Note: *The Philippines-EFTA Free Trade Agreement entered into force on 1 June 2018 for the Philippines, Norway, Liechtenstein and Switzerland and on 1 January 2020 for Iceland.*

Sector-specific commitments

1.10. Paragraphs 4.26., 4.48. and 4.59. state that the sector-specific commitments made by Iceland, Norway and Switzerland for the telecommunications sector under this Agreement mirror to a very large extent their GATS commitments. The table in paragraph 4.37., however, shows that Liechtenstein's commitments, unlike those of its counterparts, will be "full" (not subject to limitation(s) under market access or national treatment) and "improved" (as compared to those under the GATS). In light of the above, we would like to know:

- a. What would be the main differences between the commitments made by Iceland, Norway and Switzerland and the new level of ambition of the commitments made by Liechtenstein?**

Joint response from the Parties

The schedule for Liechtenstein is similar to that of Switzerland and compared to the schedules of Norway and Iceland have a somewhat greater coverage of telecom subsectors.

- b. How will Liechtenstein's commitments under the Agreement represent an "improvement" on its GATS commitments?**

Joint response from the Parties

In addition to greater coverage of telecoms subsector than in GATS, which is limited to commitments in enhanced/added-value telecom services, the national monopoly reservation in GATS is also removed.

1.11. Paragraph 4.72. states that the commitments that the Philippines will make under the Agreement are "partial" (subject to some limitation(s) under market access or national treatment) and "similar" (possibly, in specific individual cases, with limited improvements and/or limited additional reservations). In light of the above, we would like to know:

- a. What are these limitations on telecommunication services, based on which the Philippines's commitments are considered "partial"?**

Joint response from the Parties

The Philippines made partial commitments in telecommunication services under Mode 3, taking into consideration limitations on foreign equity participation and the required franchise approval from the Congress of the Philippines, among others. For the complete list of limitations, kindly refer to the Philippines Schedule of Specific Commitments under PH-EFTA Agreement, which can be accessed at <https://www.efta.int/media/documents/legal-texts/free-trade-relations/philippines/annexes/Annex-XI-Appendix-1-The-Philippines.pdf>

- b. For which specific cases are the Philippines's commitments under the Agreement considered "similar" to, rather than the "same" as, its commitments under the GATS?**

Joint response from the Parties

Based from the table of comparison between GATS and PH-EFTA commitments prepared by the WTO Secretariat (Table 4.5), the Philippines has "similar" commitments on telecommunication services and services auxiliary to all modes of transport. Kindly note that commitments on telecommunication services include the following additional commitments:

"Where spectrum is to be allocated for the supply of telecommunications services, the competent authority of a Party shall provide for a transparent and competitive process for the allocation of spectrum which would include the following:

- (a) a public consultation process on the allocation process;
 (b) sufficient detail of the process in order to apply for and bid for the spectrum, including providing sufficient reasonable time for all applicants to review and examine the requirements and to prepare their submissions;
 (c) the detailed selection principles and criteria for choosing among applicants; and
 (d) a transparent and objective method for determining eligibility for award of the spectrum."

On the other hand, commitments made under Mode 4 on services auxiliary to all modes of transport are all unbound. In addition, two other subsectors under transport services have "partial" commitments under PH-EFTA, which are:

- Container yard and depot service within ports (749**)
- Other supporting and auxiliary transport services (749).

1.12. Furthermore, the table in paragraph 4.74. states that, under the Agreement, the Philippines replicates only partial commitments for courier services and some telecommunication services from the GATS. In light of the above, we would like to know:

a. What are the limitations of these "partial" commitments?

Joint response from the Parties

It may be noted that the Philippines only has commitments in courier services but none on postal/mail services under the GATS and the Philippines-EFTA. Thus, Philippine commitments on courier services in the Schedule of Specific Commitments are subject to the limitations under the Horizontal Commitments. These include limitations on foreign equity participation and acquisition of land, among others.

For the full list of limitations, please refer to the Philippines' Horizontal Commitments under PH-EFTA Agreement, which can be accessed through this link: <https://www.efta.int/media/documents/legal-texts/free-trade-relations/philippines/annexes/Annex-XI-Appendix-1-The-Philippines.pdf>

b. In addition to "courier services", for which other "telecommunication services" would it have these "partial" commitments?

Joint response from the Parties

The Philippines made partial commitments in the following subsectors under telecommunications services:

The following services (a-g) are offered only on a facilities basis, for public use, using either wired or wireless technology except cable television (CATV) and satellite

a. Voice telephone services (5721)

- Local services
- Toll services

Domestic
International

*b. Packet-switched data transmission services (7523**)*

*c. Circuit-switched data transmission services (7523**)*

*d. Telex services (7523**)*

e. Telegraph services (7522)

f. Telegraph services (7522)

*g. Private leased circuit services (7522**+7523)*

h. Other services

- Cellular mobile Telephone service (75213)
- Satellite services

Data and message transmission services*Data network services (75231)**Electronic message & information services (75232)***Domestic regulation****1.13. Paragraph 4.84: Regarding competition in professional services are you foreseeing any challenges in order to harmonize state regulation and self-regulation by professional bodies, between the countries of this FTA?****Joint response from the Parties**

Regarding the query on harmonization between the Parties, Article 6.8 of the PH-EFTA FTA or the provision on Recognition, provides that countries or parties in the FTA shall give due consideration to any requests on the recognition of education or experience obtained, requirements met, or licenses or certifications granted by the other party. Such arrangement may be based upon an agreement or arrangement with the other party or done unilaterally. No Party has so far made any request in this respect.

Professions in the Philippines are regulated by the state through the Professional Regulation Commission. Each profession in the Philippines is governed by their respective laws, which prescribes the licensing requirements and qualifications to practice the said profession in the country. Thus, there is no concern on harmonization between state regulation and self-regulation by professional bodies for the Philippines.

Relative to the alignment of domestic qualification standard with international qualifications framework, the Philippine Qualification Framework (PQF) was established by law through Republic Act No. 10968. Through this act, the International Alignment Working Group was established to initiate comparability and benchmarking activities of the PQF with other countries and regional or international groupings.

The horizontal section of the Philippines' schedule of Commitments stipulates that there are specific requirements or permits needed before foreigner can practice in the country. Note that the reference provision cited in the question refers to competence of professionals and not competition.

Investment**1.14. Paragraph 4.101. Which specific disciplines does this paragraph refer to?****Joint response from the Parties**

The disciplines referred to under paragraph 4.101 include the provision of stable, non-discriminatory, and transparent investment conditions for investors and promotion of investment flows as a means for achieving economic growth and development.

1.15. Paragraph 4.102. What dispute settlement mechanisms does the Agreement envisage for disputes between investors and the State?**Joint response from the Parties**

The Investment Chapter does not include provisions on investor-state dispute settlement. The objective of the Chapter is to mutually enhance investment opportunities.

Competition**1.16. Paragraph 5.26: The Parties shall cooperate in their dealings on anticompetitive practices with the aim of ending such practices (Article 10.2). Consultations, within the Joint Committee, may be requested by a Party (Article 10.3).**

- a. Are there any cooperation activities between the Parties regarding merger control, cooperation on capacity building or advocacy that have been**

implemented between the competition authorities of the Parties under the agreement?

b. Has there been any need to cooperate in other strategic areas such as technical assistance or advocacy?

Joint response from the Parties

The Philippines and EFTA have yet to discuss the operationalization of cooperation mechanisms related to the Competition provisions of the FTA.

1.17. Paragraph 5.26: Consultations, within the Joint Committee, may be requested by a Party (Article 10.3).

Have there been any cases in which the Joint Committee requested the competition authorities of the Parties to take some form of action in respect of cooperation, consultations or information exchange, in accordance with Article 10.3?

Joint response from the Parties

None. The Joint Committee has not requested the competition authorities of the Parties to undertake such activities.

Electronic commerce

1.18. Paragraph 5.34: The Agreement does not contain any specific disciplines on electronic commerce.

Although the table of contents of the factual presentation refers to two chapters, electronic commerce and SMEs, they were not included in the Agreement. For Mexico, these areas are not only extremely important for strengthening trade, but are also part of a strategy for innovation and inclusion and were thus included in the most recent Agreements. In this regard, are you considering any update, modernization or mechanism to integrate these areas in the near future?

Joint response from the Parties

Both the Philippines and EFTA, through the Joint Committee may discuss the inclusion of additional areas such as e-commerce. The Joint Committee, as indicated in Article 12.3, may take decisions and make recommendations by consensus.

Likewise, Article 12.2 of the FTA allows the Joint Committee to establish sub-committees or working groups to assist it in accomplishing its tasks.

Small and medium-sized enterprises

1.19. Paragraph 5.34: The Agreement does not contain any specific disciplines on SMEs.

Although the table of contents of the factual presentation refers to two chapters, electronic commerce and SMEs, they were not included in the Agreement. For Mexico, these areas are not only extremely important for strengthening trade, but are also part of a strategy for innovation and inclusion and were thus included in the most recent Agreements. In this regard, are you considering any update, modernization or mechanism to integrate these areas in the near future?

Joint response from the Parties

Both the Philippines and EFTA, through the Joint Committee may discuss the inclusion of additional areas such as SMEs. The Joint Committee, as indicated in Article 12.3, may take decisions and make recommendations by consensus.

Likewise, Article 12.2 of the FTA allows the Joint Committee to establish sub-committees or working groups to assist it in accomplishing its tasks.

Questions from the delegation of Thailand

Investment (Scope and Definitions)

1.20. To what extent does scope and definition of investor and investment cover in Chapter 7? Does it cover aspects of both investment liberalization and protection? Is it applied to all forms of investment both FDI and non-FDI?

Joint response from the Parties

As provided in the Agreement, investors refer to those that make or seek to make investments in another Party's territory. Further, investments refer to those investments admitted in the territory of another Party in accordance with its domestic laws, rules and regulations. It did not distinguish between FDI and non-FDI. The Agreement provides for the furthering of a legal environment conducive to increased investment flows.

Dispute Settlement

1.21. Article 13.2 (Scope and Coverage), paragraph 3, states that: "Where disputes regarding the same matter arising under this Agreement and the WTO Agreement, the complaining Party shall consider dispute settlement in the WTO. This dispute may, however, be settled in either forum at the discretion of the complaining Party. The forum thus selected shall be used to the exclusion of the other."

- a. Can the Parties provide clarification on the scope of the term "same matter"? What are the criteria used by the Parties to determine such circumstances?**

Joint response from the Parties

This provision is what is known as Forum Selection clause in FTA, the goal of which is to "prevent conflict of jurisdictions between dispute settlement procedures in different treaties, and the vast majority of FTAs concluded in recent years include this type of clause." In this FTA, this clause recognizes the following: (1) the subject matter of the dispute is covered under both the WTO and the FTA; (2) the complaining Party has the freedom to choose the forum; and (3) the selection of a forum excludes the other forum.

- All parties are members of the WTO, and recognize that a matter subject of a dispute may be covered under both the WTO and the PH-EFTA FTA, and thus, subject to dispute settlement, or a measure inconsistent with an obligation or provision similarly found in the WTO and the FTA. What constitutes "same matter" is determined by the scope, coverage, and application of the dispute settlement provisions under the WTO and the PH-EFTA FTA.
- Article 1, Annex 2 of the WTO Agreement states "The rules and procedures of this Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to this Understanding (referred to in this Understanding as the 'covered agreements' xxx."
- Article 13.2 paragraph 1 of the PH-EFTA FTA states "The provisions of this Chapter shall apply with respect to the settlement of any dispute concerning the interpretation or application of this Agreement."
- Thus, matters arising under the FTA that are likewise matters arising under WTO covered agreements may be considered "same matters."

- b. Can the Parties explain the policy considerations and reasons for stipulating that "the complaining Party shall consider dispute settlement in the WTO" rather than dispute settlement proceeding under the Free Trade Agreement?**

The question stated that WTO shall be considered RATHER THAN dispute settlement proceeding under the FTA. The predicate that preference shall be given to WTO DSU is incorrect. A cursory reading of the paragraph shows no preference or priority of forum. The provision itself provides that: "*This dispute may, however, be settled in either forum at the discretion of the complaining Party. The forum thus selected shall be used to the exclusion of the other.*"

It is possible that the subject of the dispute arises under both the WTO and the FTA. All Parties to the FTA are also members of the WTO. The policy consideration in this clause is to give the complaining Party the choice of forum, when the dispute pertains to a matter arising under both the WTO and the FTA. The respective forum under the WTO and the PH-EFTA FTA has its own features. The complaining Party is allowed to consider these features, when it is given the freedom to submit its claim in either forum.

1.22. For procedural or jurisdictional reasons, there could be a situation where the select forum fails to make findings on the disputed claims and thus might not be able to deliver a conclusive and enforceable outcome for disputing Parties.

How do the Parties envisage the resolution of the dispute in such a situation and could there be an exception to the fork-in-the road clause if such situation arises?

Joint response from the Parties

The choice of forum given to the Parties is two-fold: to give the complaining Party the freedom to choose the forum it deems more efficient in resolving the dispute, and to bar forum-shopping. There is no exception to this clause. However, the Parties may still attempt to have a mutually acceptable solution, through other means, such as good offices, conciliation, mediation, or consultations.

Intellectual property rights

1.23. Paragraph 5.22 indicates that Section II of Annex XVIII to the Agreement contains standards concerning the availability, scope and use of IPRs. Building on the WTO's TRIPS Agreement, these standards cover copyright and related rights; trademarks, false designations of origin, trade names, and unfair competition; geographical indications; patents; plant variety protection; undisclosed information; industrial designs; and measures related to biological diversity and traditional knowledge (Articles 3 through 10 of Annex XVIII to the Agreement).

Undisclosed information

- a. In the context of undisclosed information, Article 8.2 of Annex XVIII to the Agreement provides that if an issue pertaining to the implementation of paragraph 1, which concerns the protection of undisclosed information, arises, the Parties shall jointly work and address the issue, and if necessary, establish a mechanism facilitating the cooperation, with a view to finding a mutually agreeable measure. Could the Parties provide some examples of potential issues they envisaged in relation to this Article?**

Joint response from the Parties

An example of potential issue that may arise is the implementation of new laws, policies, and administrative regulations and practices; or the amendments thereof, which pertain or relate to the issue of protection of undisclosed information.

Modalities of cooperation may include bilateral discussions on the issues especially, by legal and technical experts.

Biological diversity and traditional knowledge

- b. In the context of measures related to biological diversity and traditional knowledge, Article 10.6 of Annex XVIII to the Agreement provides that the Parties shall collaborate to address situations of non-compliance with the**

provisions of this Article (Measures Related to Biological Diversity and Traditional Knowledge). Is there any relationship between this provision and Chapter 13 (Dispute Settlement) of the Agreement? If so, to what extent?

Joint response from the Parties

The provision under Article 10.6 of Annex XVIII requires collaboration between the Parties with a view to address situations of non-compliance with the provisions of Article 10. As such, efforts shall be exerted and exhausted to enable the Parties to arrive at mutually acceptable and reasonable measures without resorting to the dispute settlement mechanism provided under Chapter 13.

1.24. Article 7 of the Section II of Annex XVIII to the Agreement contains the protection in plant variety in which the Parties shall provide for adequate and effective protection of new varieties of plants. Thus, to ensure the protection of plant varieties, the Parties shall comply with the substantive provisions of this Article or may opt to join the UPOV Convention by 2019.

We would like to learn about the progress of the Liechtenstein and Liechtenstein on their current status following the enforcement of this FTA Agreement.

Joint response from the Parties

The Philippines is compliant with the substantive provisions of Article 7 (Plant Variety Protection) of Annex XVIII through a *sui generis* system of protection under Republic Act No. 9168 or the Plant Variety Protection Act of the Philippines.

Although Liechtenstein is not party to the Convention, it fulfils all the substantive provisions of the article.
