



PAGE 3: B. ABOUT YOU

Q1: Respondent details

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Q2: Country or Customs territory

PHILIPPINES

Q3: Organization

Academic

PAGE 4: C. ABOUT YOUR CASE STORY

Q4: Title of case story

Philippine Customs Modernization: The Way for Trade Facilitation

Q5: Case story focus

Trade Facilitation.

Q6: Case story abstract

The modernization of Philippine (Bureau of) Customs is a story of how decades-old gateway practices which had been a barrier to efficient flow of goods into and out of the Philippines was finally transformed into a 21st century border institution by overcoming resistance from the bureaucracy, vested interests, organized groups, non-government organizations, various representations in the halls of Congress, and other stakeholders through strong leadership in the concerned agencies and the legislature, systematic and evidence-based analysis and advocacy, and focused and sustained aid-for-trade support from start to finish and continuing commitment in carrying through for readiness in implementation.

Q7: Who provided funding?

Bilateral donor

Q8: Project/Programme type

Single country

Q9: Your text case story

Philippine Customs Modernization
The Way for Trade Facilitation

Florian A. Alburo

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Historical Legacy and Contemporary Global Environment

A frequent narrative of Philippine trade is how the country fared better than its neighbors whether part of the tiger or emerging economies especially in the early post-war period and even as late as the decade of the seventies. In terms of traditional, non-traditional, and even innovative export products, the Philippines then did well. The difficulties however of accessing external markets by local traders and the difficulties of foreign traders in accessing domestic markets resulted in a more inward looking behavior. One of the major hurdles was facing off border formalities exerted by Philippine Bureau of Customs. It was perceived as hobbled by politicized leadership (thus changing with political changes), weak and therefore corrupt core of largely unprofessional bureaucrats, inconsistent and often non-transparent rules and procedures, decisions on goods movements that were often arbitrary, and bound by an antiquated Tariff and Customs Code (TCC). It was not helped any with a government that relied on customs duties and taxes as major source of revenue thus encouraging impositions of higher tariff and non-tariff restrictions.

The coming of globalization characterized by the break-up of production and vertical integration into components and the importance of moving these across borders to be processed along a supply chain that cuts across countries effectively reinforced the historical narrative highlighting the need to address – trade facilitation. In response Philippine Customs instituted reforms to ensure that goods movements in and out of the country are facilitated – among these were partial automation of customs declarations, the creation of green lanes, reduction of red-tagged goods, and organizational changes. Donor governments and international development agencies likewise supplemented the response with significant resources and support. World Bank, the ADB, and World Customs Organization provided capital equipment and limited infrastructure that improved connectivity and facilitated formal processing. Donor governments deployed long-term experts to develop new Customs initiative such as post-clearance audit. There were limited initiatives related to Philippine efforts at customs modernization – customs integrity (along the lines of the Arusha Declaration), automated payments, pre-arrival lodgement, and risk assessment, among others. In fact the acceleration of ASEAN's AFTA pre-empted many of Philippine efforts at customs reforms since along with AFTA were concomitant cooperation among ASEAN members on Customs ranging from the ASEAN Harmonized Tariff Nomenclature (AHTN) to ASEAN Single Window (ASW). The changing global environment for trade, along with regional efforts highlighted for the Philippines its subscription to trade facilitation

In addition all of the world's customs authorities (through the WCO) adopted a Revised Kyoto Convention (RKC) in 2006 paving the way for accession by WCO members for a modernized customs environment. The RKC contains the entire standard to be used by Customs in every step of its functions. The RKC provides a time frame of 3 years from accession date for the adoption of standards and 5 years for transitional standards. The Philippines acceded to the RKC in 2010.

Setting the Stage

A confluence of events, an archaic system, and more responsive leadership combined for a more compelling argument for customs modernization that is comprehensive and permanent. The patches of initiatives, the need to translate RKC accession into a legal framework, and the WTO passage of the Agreement on Trade Facilitation (ATF) in 2014 (which the Philippines acceded) were sufficiently compelling for a legislative bill for Modernizing Customs and Tariff Administration (CMTA).

Several versions of modernization bill have been significantly filed by many authors in the Philippine legislature with the new government in 2010 – two versions for each of the respective chambers (lower House and Senate) either re-activated or introduced in 2013. The government's declaration (indeed its necessity) to proceed with CMTA signaled the importance of marshalling a collective effort in ensuring its passage. International agencies and donor governments in turn gave support to complement the process of legislation. The EU, which had been supporting Philippine (Bureau of) Customs, was particularly well-placed in the sense that its assistance for trade facilitation was focused on two fronts. One was meant to reinforce the argument for modernization such as measuring the time it takes for cargoes to move from arrival to the final destination which was a time-release study. The other was meant to provide expertise in addressing issues of modernization and its advocacy needed for the effective passage of the law. For example the finding that the median release time for goods remained the same between 2003 and 2010 and into 2014 raised even further the need for modernization.

But steering the legislative agenda through public hearings, many consultations, and stiff opposition was not an easy task. The principal sponsors in Congress took comfort that bureaucratic leadership and the government was firmly

committed to a modernized Customs, the sustained support and advice from experts who provided analyses and gave technical assistance for advocacy, and the academe for independent views. As the process moved along, the resistance to the modernization track came from 3 flanks:

- Associations of Philippine industries opposed to general trade liberalization on the basis of arguments that domestic industries cannot compete unless given sufficient protection through tariff. In the public hearings the Federation of Philippine Industries opposed CMTA as encouraging smuggling detrimental to industries;
- Some legislators, partly with prodding from the bureaucracy, proposed a piece-meal approach by prioritizing modernization issues and legislating separate shorter bills which would be easier to understand;
- Customs brokers, based on existing arrangements, proposed status quo i.e., it is the importer or exporter, and customs broker to be the legally authorized signatory to a declaration.

The legislators stood their ground in all these flanks thereby overcoming strong resistance to the modernization functions – evidenced based research in to address issues raised by Philippine industries, the importance of a comprehensive modernization law for which chopping into pieces weakens effects, and a more watered-down role for customs brokers as envisioned in the RKC and the WTO ATF.

The CMTA

An earlier CMTA bill (of 2008) was part of the drafts that eventually became a consolidated legislation by reconciling versions from the Lower House and the Senate. These early versions never got off the ground until it was re-Introduced in 2013. Through several cycles of drafting, conferences, and hearings, final bills from both houses were individually passed in 2015. Bicameral conference committee successfully reconciled differences and the CMTA was finally signed into law in May 2016.

As a hallmark law enjoining modernization in Philippine Customs, the CMTA reflects best practices, standards, and procedures found in the RKC. Consisting of 18 titles, 43 chapters, and 1,803 sections, the CMTA is an exhaustive set of rules defining the legal framework for the country's international trade. That it is more in consonance with trade facilitation can be gleaned from a comparison of Customs functions between the earlier TCC and CMTA – the latter clearly stresses facilitation, simplification, and harmonization while the former is characterized by control and the absence of these modern functions. Moreover while there have been ad hoc efforts though seemingly extraneous, the CMTA integrates them in the various provisions – e.g., the use of information technology, modern practices, advance ruling, and post-clearance audit, among others. Since the CMTA is a package of rules and procedures that is internally consistent, when they are implemented they constitute the “bible” of border authorities which include those that are not directly in the Bureau of Customs. On the other separate (modern) practices that have been employed are also found in the CMTA such as valuation procedures.

While the length of CMTA appears formidable (one reason for the lobby to have a piece-meal approach), as an internally consistent law it actually reflects an underlying flow chart from the beginning of goods movement until the formalities are completed. And within each step in the flow are specific qualifications that narrow its scope. It adheres to both the RKC and the WTO ATF principles and practices. For example, the CMTA provides the use of brokerage services on behalf of declarant but not as mandatory requirement. The ATF discourages the use of pre-shipment inspection which is not found in the CMTA.

The CMTA is of course not an end by itself. It needs to be translated into actual administrative orders, memorandum circulars, and other official rules of behavior. The task is to promulgate the Implementing Rules and Regulations (IRR) for most of the CMTA provisions. This will require an even more concentrated agenda as the IRR becomes the real operative machinery for the law. Thus while the CMTA was signed into law in May 2016, it would take a longer period of time to finalize the IRR, publicize it and encourage consultations with all parties, and set the individual rules and regulations into associated administrative orders (e.g. Customs Memorandum Order, Customs Administrative Order).

The expression of interest by donor agencies in supporting the drafting of the CMTA IRRs is an indication of the commitment not just for the law to be passed but of making sure it has sufficient readiness for implementation, ensures that antiquated orders are repealed, inconsistencies avoided, and even institutional system and capacities are in place.

Prospects

The CMTA is a landmark in the Philippines drive to be integrated with the global economy on a more stable and sustainable footing. It basically abandons a long history of archaic border procedures and practices and embraces modernization. The toll for such a prolonged backwater of patches of modernity has been high judging from the

country's trade performance relative to the neighbors it bested in the past. Modernization of Philippine (Bureau of) Customs is a critical step in becoming a well-functioning part of global and regional trade and investment system.

Irrespective of the leadership in the bureaucracy (which itself leaves much to be desired), the fact that the law has been passed, for which modernization is to take root, somehow binds the institution to practices that all other trading economies follow. The important contribution of external aid-for-trade from CMTA's start until its IRR drafting and towards implementation readiness, is quite evident in the quality of the law (despite being imperfect) and the institutional responsiveness in ensuring the law acquires the necessary teeth.

Q10: Lessons learnt

1. Modernization for trade facilitation requires a complete and comprehensive package not piece-meal efforts which are likely to fall by the wayside
 2. Strong legislative leadership along with committed bureaucracy and donor support combine to ensure sustained efforts in delivering results
 3. Expertise in providing systematic technical assistance that address issues and concerns is necessary to overcome resistance to change
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