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Customs Brokerage Services and Trade Facilitation: A Review of Regulatory Coherence

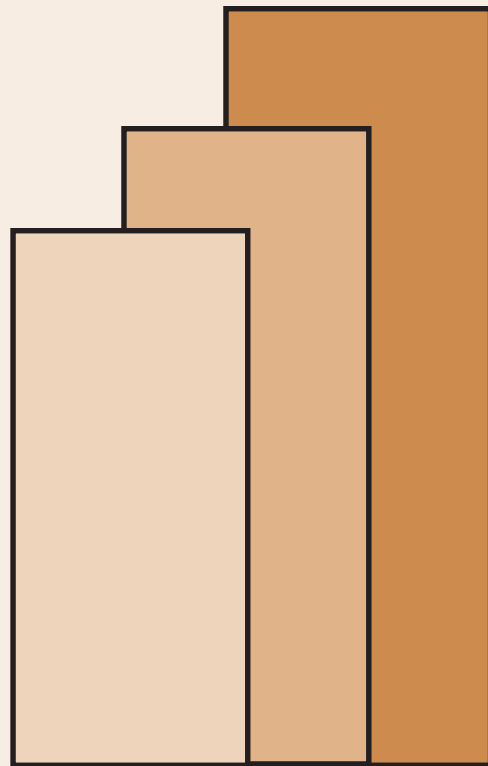
*Gilberto M. Llanto, Adoracion M. Navarro,
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Customs Brokerage Services and Trade Facilitation: A Review of Regulatory Coherence

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Abstract

The study looks at the rarely studied customs brokerage activity in the Philippines and its role in facilitating trade given the ongoing push to modernize customs administration. It analyzes how the customs brokerage profession is being regulated and synthesizes insights on opposing views on the importance of customs brokers in trade facilitation. The results of the study clearly points toward a declining relevance of the customs brokers' services in an environment where customs administration is modernizing, computerization is replacing the traditional, direct interaction of brokers with the Bureau of Customs, and a more transparent customs administration is emerging to efficiently process a significantly growing volume of trade transactions. Understandably, a threatened profession such as brokering mounts resistance in the face of changes. Customs brokers take the Customs Brokers Act of 2004 as their shield against any attempt to dilute or minimize their role in the customs administration process. However, their legalistic stand somewhat collides with the policymakers' attempt to modernize customs administration. A more positive outlook on modernization should trigger among customs brokers a paradigm shift, namely, that a modernized customs administration and trade facilitation process will necessarily create new opportunities for those adept and flexible enough to adjust to changing market conditions. Moreover, it will be more efficient and consistent with trade facilitation to allow traders to use various and modern options for releasing or shipping their goods.

Key words: ASEAN Economic Community, trade facilitation, customs brokerage

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1 Introduction

This study looks at the rarely studied customs brokerage activity in the Philippines and its role in facilitating trade given the ongoing push to modernize customs administration. It analyzes how the customs brokerage profession is being regulated and synthesizes insights on opposing views on the importance of customs brokers in trade facilitation.

It is part of the ASEAN Economic Community (AEC) Scorecard Phase III Project, which was simultaneously implemented in all ten ASEAN member countries in 2013 and supported by the Economic Research Institute for ASEAN and East Asia (ERIA). Among other things, the AEC Scorecard Phase III Project called for a case study of regulatory coherence in a service or activity under logistics and trade facilitation. The service or activity was further defined in meetings with ERIA in early 2013 as a sort of "low-hanging fruit"; thus, the Philippine research team picked customs brokerage because based on recent developments, it is an activity where reforms seem executable in the short to medium term.

In the Philippines, customs brokerage services consist of: consultation; preparation of customs requisite document for imports and exports; declaration of customs duties and taxes; preparation, signing, filing, lodging and processing of import and export entries; representing importers and exporters before any government agency and private entities in cases related to valuation and classification of imported articles; and rendering of other professional services in matters relating to customs and tariff laws, its procedures and practices (Republic Act (RA) 9280, Section 6).

The study is organized as follows: after this introduction, section 2 describes the research methodology; section 3 discusses the findings of the case study; and section 4 presents some insights and recommendations.

2 Research Methodology

The case study method was used as a general research strategy in reviewing regulatory coherence in logistics and trade facilitation. Customs brokerage is the subject of the case study. A desk review of existing regulations affecting the practice of customs brokerage in the Philippines was conducted. To gather real-life information, a roundtable discussion and series of interviews with stakeholders were held. This stakeholder engagement process is termed "regulatory conversations" by the ERIA.

The target participants for the roundtable discussion and interviews were identified through online research and initial interviews with respondents from the Professional Regulatory Board for Customs Brokers, which is the licensing authority for customs brokers. Names of associations of customs brokers in the country then surfaced. Officials from the Bureau of Customs and the Professional Regulatory Board for Customs Brokers who are directly dealing

with customs brokers were also identified. Some direct users of customs brokerage services—exporters, importers and freight forwarders were also identified by contacting the Philippine Exporters Confederation and the Federation of Philippine Industries. **Table 1** below lists and describes the stakeholders consulted for this case study.

Table 1. Stakeholders Consulted for the Case Study

Organization/Firm	Description
Bureau of Customs (BOC)	The Bureau of Customs is under the supervision of the Department of Finance. It is mandated to assess and collect lawful revenues, enforce tariff and customs laws, prevent smuggling and other frauds, control vessels/aircrafts doing foreign trade, and control import and export cargoes. It is also given jurisdiction over forfeiture and seizure cases.
Professional Regulatory Board for Customs Brokers (PRBCB)	The PRBCB is under the supervision and administrative control of the Professional Regulatory Commission (PRC). Its primary mandate is the supervision, control and the regulation of the practice of the customs broker profession. The PRBCB is also tasked to standardize and regulate the customs administration education and oversee the examination and registration of customs brokers.
Chamber of Customs Brokers, Inc. (CCBI)	The CCBI is the accredited professional organization for customs brokers as recognized by the PRC. All customs brokers are automatic members of the CCBI, but they are not prohibited from forming and joining other associations. The CCBI's objectives include the following: to promote a better understanding between the customs brokerage industry and the private sector; to serve as an advocacy group in customs brokers' consultations with the Bureau of Customs; and to assist the Bureau Customs in the formulation of policies and operational reforms.
Professional Customs Brokers Association of the Philippines (PCBAPI)	The PCBAPI is an organization of customs brokers in the Port of Manila.
International Markets Group Republic Chemicals Inc.	Direct user of customs brokerage services
Fine Seeds Marketing, Inc.	Direct user of customs brokerage services
Commercial Freight Services, Inc.	Direct user of customs brokerage services

In the roundtable discussion with case study participants, distinct but related sets of questions were asked of the government representatives and the customs brokers associations' representatives. The participants in the roundtable discussion consisted of six representatives of customs brokers, two representatives of the Bureau of Customs, and one representative of the Professional Regulatory Board for Customs Brokers. Follow-up conversations by phone and in person with some roundtable discussion participants were also done by the research team to seek further clarification on certain issues. The direct users of customs brokerage services were not able to join the roundtable discussion; nevertheless, the team managed to interview three direct users—one importer, one importer-exporter, and one forwarder. **Annex 1** provides the guide questions used during the roundtable discussion and interviews.

3 Case Study on Customs Brokerage

Regulations Relevant to the Practice of the Customs Brokerage Profession

The rendering of customs brokerage services is regulated through licensing by the Professional Regulatory Board for Customs Brokers under the Professional Regulation Commission. To be licensed as a customs broker, licensure applicants must pass a written examination testing their knowledge on:

- (a) customs laws and implementing rules and regulations;
- (b) tariff laws and international trade agreements;
- (c) practical computation of customs duties, taxes and other charges;
- (d) documentation, professional ethics, customs procedures and practices; and
- (e) warehousing and cargo handling operations (RA 9280, Section 15).

The accredited professional organization of customs brokers in the country recognized by the Philippine Regulatory Commission is the Chamber of Customs Brokers, Inc. (CCBI). Passing the licensure exam makes a customs broker an automatic member of the CCBI. However, the existence of CCBI does not prevent customs brokers from forming other organizations. Thus, other organizations of customs brokers have emerged, namely, the Professional Customs Brokers Association of the Philippines and the Philippine Society of Filipino Customs Brokers, Inc. The members of these organizations can be unaffiliated or affiliated with brokerage firms.

A customs broker can operate and practice its profession without having any connections to a customs brokerage firm. The Customs Brokers Act of 2004 provides that the name of the specific broker, and not the name of the brokerage firm, should be reflected on the lodge of an import entry.

A licensed and effective customs broker is expected to have knowledge and understanding of various laws and regulations that govern tariffs and customs. The Tariff and Customs Code of the Philippines or Republic Act (RA) 1937 and various amendments to it contain guidelines that are relevant to the operation and practice of the customs brokerage profession. Customs brokers must also be very familiar with the law regulating the practice of their profession, that is, RA 9280. **Table 2** describes the laws and regulations governing customs brokerage.

Table 2. Laws and Regulations Relevant to the Practice of the Customs Brokerage Profession

Laws and Regulations	Purpose
PD No. 1464 <i>Tariff and Customs Code of the Philippines (TCCP, RA 1937), as amended</i>	Consolidated and codified all the tariff and customs law of the Philippines (1978)
RA No. 9135	Further amended certain provisions of the TCCP, as amended
RA No. 7651	Introduced further amendments to certain sections of the TCCP, as amended, in order to revitalize and strengthen the Bureau of Customs
RA No. 7650	Repealed section 1404 and amended sections 1401 and 1403 of the TCCP, as amended; the sections are related to the physical examination of imported articles
RA No. 6647	Restructured the import duty rates and the classification of certain articles under section 104 of the TCCP, as amended
PD No. 1999	Amended section 301 of the TCCP, as amended
PD No. 1973	Amended subsection (a) of section 302 of the TCCP, as amended.
RA 9280 <i>Customs Brokers Act of 2004</i>	Regulation on the practice of customs brokers profession in the Philippines; provided for the creation of a professional regulatory board for custom brokers, and appropriating funds therefore
Board for Customs Brokers Resolution No. 02, Series of 2005 <i>Code of Ethics for Customs Brokers</i>	Adopted and promulgated the Code of Ethics for Customs Brokers prescribed and issued by the Chamber of Customs Brokers and the Professional Regulation Commission
RA 9853	Amended section 27 (Acts Constituting the Practice of Customs Broker Profession) which requires an import entry to be signed by a customs broker and the consignee/owner/importer under oath; and section 29 (Admission to Professional Practice) which allows firms to engage in customs brokerage

Laws and Regulations	Purpose
	services provided that they hire at least one licensed customs broker and have a paid-up capital of PhP 1 million
RA No. 8424 <i>National Internal Revenue Code of 1997 (as amended; the portion on VAT and Excise Taxes on Imported Articles)</i>	Amended the National Internal Revenue Code, as amended; aims to promote sustainable economic growth through the rationalization of the Philippine internal revenue tax system, including tax administration
Various Customs regulations implementing TCCP <ul style="list-style-type: none"> • e.g., Customs Administrative Order (CAO) 3-2006 A 	CAO 3-2006 A ensures the effective and proper enforcement of the Tariff and Customs Laws and all other laws, rules and regulations relating to the Tariff and Customs Administration, prevents and suppresses all forms of smuggling and other frauds against customs revenue, and regulates the conduct of customs brokers; it superseded CAO 3-2006 and Customs Memorandum Order 6-2006 which are also meant to regulate the practice of customs brokerage

Issues that Surfaced during the Roundtable Discussion

The results of engaging stakeholders in the customs brokerage sector helped the Philippine research team analyze the viewpoints of the different stakeholders on what exactly the roles are of customs brokers in trade facilitation, as well as the current issues faced by the sector given the recent efforts to modernize customs administration. According to the roundtable discussion participants, the recurring issues encountered in the customs brokerage activity are related to redundancies and inconsistencies in customs policies and procedures. These issues are described below.

a. On the accreditation of customs brokers

Per section 6 of RA 9280, or the “Customs Brokers Act of 2004”, any licensed customs broker is readily authorized to transact with any government agency, which includes the BOC.² In practice, however, the BOC requires that customs brokers be accredited by the BOC itself before they could transact with BOC personnel. This policy is promulgated through Customs Administrative Order (CAO) 3-2006 which regulates the practice of customs brokers within BOC premises. Accreditation by the BOC requires customs brokers to submit specific documents (e.g. Social Security System documentation, National Bureau of Investigation clearance, and list of clients) and pay the accreditation and processing fee amounting to PhP 1,300. Moreover, customs brokers are required to renew their accreditation annually from January to March; renewal beyond April 16 meets a delinquency payment of PhP 3,000. In 2006, PCBAPI filed a case with the Manila Regional Trial Court (RTC) contesting CAO 3-2006 and all its amendments. They argued that the CAO is inconsistent with the provisions in RA 9280, i.e., section 4.a which states the definition of a licensed “Customs Broker”³, and section 6 which details the scope of practice of licensed customs brokers. In July 2013, it was reported⁴ that the Manila RTC granted the petition filed by the PCBAPI with regard to the withdrawal of the said CAO and all its amendments.

b. On procedures at the BOC

² RA 9280, Sec 6: “Customs Broker Profession involves services consisting of consultation, preparation of customs requisite document for imports and exports, declaration of customs duties and taxes, preparation signing, filing, lodging and processing of import and export entries; representing importers and exporters before any government agency and private entities in cases related to valuation and classification of imported articles and rendering of other professional services in matters relating to customs and tariff laws its procedures and practices.”

³ RA 9280, Sec. 4a states that a customs broker “is any person who is bona fide holder of a valid Certificate of Registration/Professional Identification Card issued by the Professional Regulatory Board and Professional Regulation Commission.”

⁴ Nep, Jigs [2013] “Brokers elated by court decision annulling Customs orders,” ZamboTimes.

<http://www.zambotimes.com/archives/news/68967-Brokers-elated-by-court-decision-annulling-Customs-orders.html> (Accessed July 22, 2013)

The implementation of the identification card (ID) policy has been much criticized by customs brokers. The BOC gives customs brokers a Port User's Pass (PUP) to gain access to premises of the ports and the customs areas for their transactions. However, the said PUP can only be validly used in the port where it has been issued, and not in any other port. Customs brokers and other stakeholders must secure a PUP in each of the ports where they have to transact. For example, transactions in four ports in the country will mean four different PUPs. Stakeholders believe that this policy is redundant and insist that a licensed customs broker must only secure one ID to gain access to the different ports of the country. They complain that this particular policy only serves to lengthen the time of transaction of customs brokers with the BOC, which consequently affects the quality of their service to and the welfare of importers.

c. On the creation of ad hoc offices

The tendency of the Commissioner of the BOC to create ad hoc offices and the seeming ambiguity of their functions were also raised as concerns. Through the issuance of a Customs Memorandum Order (CMO) the BOC Commissioner can create task forces and other ad hoc offices at his discretion to discharge various functions as may be identified by the Commissioner. An example cited by a participant to the roundtable discussion was the creation of the Revenue Enhancements for the Attainment of Collection Targets (REACT) Task Force with the purported rationale of helping to improve revenue collection by the BOC.

The objective is laudable but customs brokers complain that in implementing its function, the Task Force has delayed trade transactions because it subjects to examination the taxes and duties that have already been examined by the regular BOC appraisers. The REACT Task Force wears several hats: it may act as an intelligence unit of the Commissioner, as customs police, and as appraiser. The Task Force wearing any of these hats can hold a shipment and declare it as under-valued notwithstanding the examination done by the regular BOC staff assigned to do the job. The customs brokers submit that any shipment that has already gone through the proper formal procedures of examination and approval should not be subjected again to the same kind of tedious inspection by an ad hoc office. However, what happens in practice is that customs brokers are obliged to undergo the same redundant processes in different offices and submit the same documents all over again to the Task Force.

Customs brokers believed that the Commissioner created this Task Force with good intentions (e.g., to protect government revenue and to curb smuggling) but the adverse consequences of this on trade facilitation has to be weighed against the perceived benefits of this discretionary action. Redundant customs procedures adversely affect trade facilitation because they slow down the whole process of importation.

In this particular case, it seems that the BOC management does not trust enough its own appraisers to collect the right amount of taxes and duties, but the offered solution to low revenue collection or under-collection of taxes and duties creates a perverse effect. Perhaps the more efficient solution is to re-train BOC appraisers and impose performance targets and an appropriate incentive system to improve revenue collection. It is noted that the BOC should formulate other methods, e.g., cleansing their ranks by filing cases against misbehaving staff to attain their revenue objectives without impeding the smooth flow of import clearances. There is no guarantee that task forces will be more disciplined than the regular staff assigned to particular functions. On the contrary, the risk is that task forces may begin to see themselves as “special,” above the ordinary rules of the office, and are accountable only to the person who has created them.

d. On the accreditation of importers

Importers also have to be accredited by the BOC before they can legitimately transact with the bureau. For accreditation, an importer must submit documentary requirements to the Customer Profile Registration System (CPRS) and then pass the same set of documents to the Interim Customs Accreditation Registration Units (iCare) units. Apart from this transaction that is deemed redundant by brokers, several other requirements seem unnecessary. Importers renewing their accreditation are still required to re-submit documents that they have previously submitted when they originally applied for accreditation. Fulfilling those requirements impose economic (compliance) costs to importers and slows down the process of importation. For the participant-customs brokers, the importers’ difficulties in getting accredited and the time it takes to be accredited creates the incentive for smuggling. They, therefore, recommend the simplification of the accreditation process, including the renewal of accreditation.

e. On the harmonization of rules and procedures at the Bureau of Customs

A technical working group in the BOC was formed to look into the harmonization of rules and procedures at the BOC. The BOC representatives shared during the roundtable discussion that the BOC’s technical working group has already consolidated the results of its review and submitted the consolidated document (i.e., proposed Codified Harmonized Rules and Regulations) to the Department of Finance, which has oversight functions over the BOC. This document aims to harmonize all relevant rules and screen out regulations that were promulgated in the past but are already deemed inapplicable or inappropriate at present. The proposed harmonized rules and regulations seek to remove, revise, and/or replace regulations that are deemed redundant and inapplicable. The BOC representatives believe that harmonization should also be undertaken at a higher level—that is, at the level of the laws for which the implementing rules and regulations were promulgated. Thus, a review of the provisions of the Tariff and Customs Code and its amendments must also be conducted by legislators.

- f. On the brokers' opposition to certain provisions of the bill on Customs Modernization and Tariff Act

The proposed bill on Customs Modernization and Tariff Act is a major piece of legislation that will address regulatory incoherence in the customs administration process and not just in customs brokerage services. The customs brokers agree that customs infrastructure and administration in the country need to be modernized and computerized to promote better trade facilitation. However, they object to certain provisions of the draft bill that they consider to be detrimental to their profession. The customs brokers believe that Section 102 (Definition of Terms), Section 110 (Declarant) and Section 1330 (Supervision and Regulation of Third Parties) of the proposed bill are “unfair, arbitrary and oppressive” to the interest not only of the Filipino customs brokers but to the state as a whole. The next subsection provides the context of this objection and discusses the details of their opposition.

The Proposed Bill on Customs Modernization and Tariff Act and Its Implications to Customs Brokers

The Proposed Modernization in the Context of the Revised Kyoto Convention

Since the ratification of the original Kyoto Convention in 1974, customs administration modernization has become a growing trend in the international arena. The convention was amended in 1999 to keep up with the technological advances and developments in international trade. According to APEC (2003)⁵, the following are the purposes of the Revised Kyoto Convention (RKC):

- Develop uniform customs practice and procedure around the world;
- Meet the needs of international trade and customs for facilitation, through simplification of customs procedures and practices;
- Ensure appropriate standards of customs control;
- Enable customs to respond to major changes in business and administrative methods and techniques; and
- Reduce the costs to traders and to governments of customs processing

The harmonization and simplification of customs administration across countries is supposed to remove non-tariff barriers. Ultimately, removal of non-tariff barriers will facilitate and liberalize international trade.

The Philippine government ratified the RKC or the International Convention on the Simplification and Harmonization of Customs Procedures in 2010. According to the BOC, the Philippines has sent a strong message to the international trade community that the government is committed to ensuring that customs procedures will promote trade facilitation and secure movement of goods across territories. Stakeholders also believe that modernization will reduce logistics chain costs

⁵ APEC. 2003. *The Revised Kyoto Convention: A Pathway to Accession and Implementation*. Asia-Pacific Economic Cooperation Publications

and will increase the country's competitiveness in supporting current investments and attracting potential investors.⁶

The Implications of the Proposed Bill to the Customs Brokerage Profession

In connection with the Philippines' participation in the RKC, several national legislations have been filed to spearhead the modernization of the Philippine customs laws and procedures. Currently, the pending legislation to realign the customs procedure with the standards set by the RKC comes in the form of House Bill 4788 on Customs Modernization and Tariff. The proposed bill is designed to upgrade the processes and practices of the BOC, secure international trade, protect and enhance government revenue, and prevent smuggling and other fraudulent transactions.⁷ The Philippines set a self-imposed deadline of June 2013 to enact the House Bill into law. The deadline for the expected enactment of this bill into law has passed and BOC believes that the proposed bill will be re-drafted and re-submitted as a key legislation when the 16th Congress convenes.

Though stakeholders generally agree that modernization and computerization of the BOC procedures are necessary reforms, some have reservations on certain provisions of the customs modernization bill, especially those concerning the profession of customs brokers. Customs brokers hope that they would be included in the consultations leading to the drafting of a new bill.

As mentioned before, there are three provisions in the proposed bill that customs brokers deem detrimental to their profession. These are Section 102 (Definition of Terms), Section 110 (Declarant) and Section 1330 (Supervision and Regulation of Third Parties). **Table 3** provides a brief description of these sections as they are currently worded in the submitted House Bill and the proposed revisions to these.

a. On the Definition of Terms in Section 102

What alarms the brokers is not only the provisions mentioned above, but also what has been excluded from the bill. In Section 102, the definition of customs brokers is missing from the list of definition of terms. For the brokers, the exclusion of the definition of their profession in the House Bill signifies that the government fails to recognize the vital role that brokers play in and their significant contributions to effective, efficient, and secure international trade. The brokers fear that ultimately, their profession will not be part of the envisioned modern customs administration in the country.

⁶ Joint Foreign Chambers of the Philippines. (2012). Letter to Senator Ralph Recto. Retrieved 10 May 2013 from <http://www.investphilippines.info/arangkada/wp-content/uploads/2012/04/JFC-Letter-to-Sen.-Recto-re-CMTA-April-2012.pdf>

⁷ Romero, P. (2011). '*House body endorses Customs Modernization and Tariff Act*'. Philstar. Retrieved 10 May 2013 from <http://www.philstar.com/business/702018/house-body-endorses-customs-modernization-and-tariff-act>

Table 3. Provisions in House Bill 4788 that Customs Brokers Deem Detrimental to Them

Provision	As Stated in the House Bill	Suggested Revisions by Customs Brokers
<p>Section 102. Definition of Terms.</p>	<p>(q) Customs and Tariff Laws xxx</p> <p>(r) Customs office xxx</p>	<p>(q) Customs and Tariff Laws xxx</p> <p><i>(r) Customs Broker - is a professional defined under Section 4 (a) of Republic Act 9280, as amended ...xxx</i></p>
<p>Section 110. Declarant.</p>	<p>Declarant. – A declarant is a person who makes and submits to the Bureau goods declaration or in whose name such declaration is made. Any person who possesses the right to dispose of the goods shall be entitled to directly act as declarant. However, when such person authorizes an agent to make the declaration in his behalf, he can only do so through an accredited customs broker except in case when the declarant is a juridical person in which case it may authorize a responsible officer to make the declaration in behalf of the juridical person.</p>	<p>Declarant. – A Declarant is a person who makes and submits to the Bureau (of Customs), goods declaration or in whose name such declaration is made. Any person who possesses the right to dispose of the goods shall be entitled to act as declarant. <i>PROVIDED THAT, IF THE DECLARANT IS A JURIDICAL PERSON HE SHALL AUTHORIZE A LICENSED CUSTOMS BROKER TO ACT IN HIS BEHALF. PROVIDED FURTHER THAT, IF THE DECLARANT IS A NATURAL PERSON AND HE OPTED TO USE AN AGENT HE SHALL AUTHORIZE A LICENSED CUSTOMS BROKER TO ACT AS SUCH.</i></p>
<p>Section 1330. Supervision and Regulation of Third Parties.</p>	<p>Supervision and Regulation of Third Parties. – Third parties transacting with the Bureau in behalf of importers and consignees shall be treated equally as if they are themselves the importers or consignees. Third parties transacting with the Bureau shall be liable for acts committed in violation of this Act and related laws.</p> <p>Upon the recommendation of the Commissioner of Customs, the Secretary of Finance shall issue rules</p>	<p>Supervision and Regulation of Third Parties. – Third parties transacting with the Bureau in behalf of importers and consignees shall be treated equally as if they are themselves the importers or consignees. Third parties transacting with the Bureau shall be liable for acts committed in violation of this Act and related laws.</p> <p>Upon the recommendation of the Commissioner of Customs, the Secretary of Finance shall issue rules and regulations for the Bureau to supervise and regulate all third parties dealing</p>

Provision	As Stated in the House Bill	Suggested Revisions by Customs Brokers
	<p>and regulations for the Bureau to supervise and regulate all third parties dealing directly with the Bureau for and in behalf of another person in relation to the importation, exportation, movement, storage and clearance of goods. Third parties as provided in this section may refer to, among others, logistics providers, importers, exporters, customs brokers, carriers, airlines, shipping lines, shipping agents, forwarders, consolidators, port and terminal operators and warehouse operators.</p> <p>The rules and regulations shall provide for specific conditions when third parties may or may not directly transact with customs and shall provide a written notice in case such third parties are, for valid reasons, barred from transacting with customs.</p>	<p>directly with the Bureau for and in behalf of another person in relation to the importation, exportation, movement, storage and clearance of goods. Third Parties as provided in this section may refer to, among others, Logistics Providers, Importers, Exporters, Customs Brokers, Carriers, Airlines, Shipping Lines, Shipping Agents, Forwarders, Consolidators, Port and Terminal Operators and Warehouse Operators.</p> <p>The rules and regulations shall provide for specific conditions when third parties may or may not directly transact with customs and shall provide a written notice in case such third parties are, for valid reasons, barred from transacting with customs.</p> <p>PROVIDED, THAT, THE PERSONS ENUMERATED HEREUNDER AS THIRD PARTIES MUST HIRE AN ACCREDITED CUSTOMS BROKER PRIOR TO ENGAGING IN CLEARANCE OF GOODS EXCEPT WHEN SUCH THIRD PARTY IS ALREADY AN ACCREDITED CUSTOMS BROKER.</p>

b. On the Declarant Provision in Section 110

As defined in Section 110, a declarant is a person who submits a goods declaration to the BOC or in whose name such declaration is made. In practice, the declarant computes the lawful duties and taxes to be imposed on the shipment of cargoes. In the current institutional set-up, cargoes undergo mandatory assessments of licensed customs brokers. Moreover, only customs brokers can sign the import and export entry declarations. However, in the proposed bill, the need for a customs broker is not specified in cases wherein the declarant is a firm (“juridical person”) since such firm may authorize any responsible officer to make the declaration on its behalf.

In the proposed bill, anyone – including importers and exporters – can now declare their goods or can designate a person to declare the cargo on their behalf. The services of a licensed customs broker would now be considered “optional” as the declarant can be anyone that the importer or exporter deemed capable of making the declaration.

Customs brokers consider this provision as another manifestation of an adversarial stand of the House Bill against their profession. They feel that this will not only endanger their jobs but will also jeopardize the processes and integrity of transactions in the BOC. The customs brokers stated that they are experts in the Tariff and Customs Code of the Philippines and have technical knowledge of relevant sections of the National Internal Revenue Code. Letting an untrained person handle the declaration of cargo and computation of duties and taxes can cause costly delays and serve as a non-tariff barrier to efficient trade. Moreover, declarants not conversant with Philippine tax laws could make mistakes that may lead to lower tax collections. Hence, they claim that the interest of the state is also in danger because of the likely negative impact of the provision on the BOC’s revenue targets. Moreover, they believe that handing over the declaration of goods to unlicensed and unregulated persons could aggravate technical smuggling.

c. On the Third Party Provision in Section 1330

Another provision that the customs brokers are wary of is the reference to and definition of “third parties” in Section 1330. In the proposed legislation, third parties refer to the logistics providers, importers, exporters, customs brokers, carriers, airlines, shipping lines, shipping agents, forwarders, consolidators, port and terminal operators and warehouse operators, among others. In the bill, any of those enumerated and considered as third party is entitled to release the shipment as long as they are entrusted with the job and are authorized by the importer. This is again considered as a threat to the customs broker profession because it means that other parties as enumerated by law can work for the release of imported goods. This provision, according to the brokers, is an infringement of their rights as a “learned profession” that should be protected by an existing law, i.e., RA 9280 (the Customs Brokers Act of 2004).

The Bureau of Customs' Stand on the Proposed Bill

The BOC representatives believe that the country, as signatory to the Revised Kyoto Convention, should have customs procedures that comply with best customs practice and standards in the global markets. Such compliance is actually the main purpose of the proposed bill on customs modernization and tariff act. According to the interviewees from the BOC, the BOC is aggressively pushing for the approval of the proposed bill at the Senate with the BOC Commissioner himself lobbying for its passage.⁸ Many importers support this bill because they see that the cost of the customs brokers' services can be an avoidable operational cost. Under the proposed bill, importers have various alternatives that they can take for the release of their shipment. The customs brokers' opposition to the bill has significantly delayed its passage into law, which makes it impossible to meet the standards defined by the RKC.

The BOC states that the bill will be proposed again, but with refinements, during the 16th Congress (which opened in July 2013). President Aquino recently certified it (i.e., the original bill) as an urgent bill, a signature of government support to the proposals. According to the respondents from the BOC, there is no assurance that the proposed revisions by the brokers can be accommodated in the bill to be re-filed.

Customs Brokers and Trade Facilitation: The Way They See It

The customs brokers argue that as a result of the Philippines' accession to the Revised Kyoto Convention, there is a move to make customs brokers irrelevant in the whole customs process. However, they stress that their role in trade facilitation is vital. They highlight their role as intermediaries in the whole customs process wherein they represent both the traders and the government. Customs brokers consider themselves as upholding the interest of the government because they ensure the collection of the right amount of duties and taxes. They see themselves as helping the tax collection efforts of the government.

They also argue that even advanced countries like the United States, Australia and Canada still have customs brokers as major players in customs administration. Furthermore, they argue that although the Philippines is a signatory to the Revised Kyoto Convention, it is allowed by the same convention to adhere to local legislation when it comes to trade facilitation. In the Philippines, such legislation is RA 9280 or the Customs Brokers Act of 2004 that protects the interest of the customs brokers. This is another argument used by customs brokers to retain their mandated monopoly in trade facilitation.

Finally, they argue that since they have the expertise on Philippine trade laws as well as tariff and customs procedures, they can readily adapt to the changing needs of the international

⁸ The BOC interviewees mentioned that although some BOC officials have their personal reservations to the bill, they do not have a choice but support it because the Department of Finance, the head agency of the BOC, strongly advocates for the enactment of this bill on customs modernization and tariff.

trading community. They believe that they are tools for institutional checks and balances to minimize questionable transactions at the BOC. They believe that their knowledge of customs administration rules and regulations equips them with the proper tools to question and counter any arbitrary change on the procedures, which may disadvantage either the government or the traders. In this sense, customs brokers claim that they have a vital role as facilitators of efficient, effective and secure international trade and that the perceived benefits of discarding them from the whole customs administration process would be outweighed by the risks.

Customs Brokers and Trade Facilitation: The Way Some Direct Users See It

From the point of view of some direct users of customs brokerage interviewed by the research team, the value added of customs brokers in trade facilitation is not as significant as the brokers claim. According to the respondents, small traders benefit from the familiarity of customs brokers with the customs process and from the use of the latter's personal connections to move goods faster. Large traders, on the other hand, get no value added from the service provided by customs brokers because they usually rely on freight forwarders to facilitate transactions and to ensure the traders' compliance with government requirements on top of those forwarders' contracted responsibility to move imported cargoes from the docks to the traders' warehouses, or transfer export products from the warehouses to the docks. In a way, freight forwarders act as "one-stop shop" trade facilitators: they bundle the facilitation of the paperwork with the actual movement of shipments or cargoes. However, despite the presence of parties that can efficiently do the services purportedly done by customs brokers, all traders have to comply with the legal requirement that import/export documents be signed by customs brokers.

The following discussions give more details on the direct users' views on the role of customs brokers.

a. On the value added of customs brokers to large traders

According to the importer and exporter respondents, their relationship with the customs brokers depends on their needs. Large exporting/importing firms usually do not need to directly deal with customs brokers. Instead, these firms tap the services of freight forwarders to process the requirements to move their exports or imports. The freight forwarders, in turn, contact or designate a broker to sign the necessary documents (e.g., customs declaration/entry form) to be submitted to the BOC. Delegating the task of hiring customs brokers to freight forwarders is a convenient market practice of large importers or exporters. As mentioned above, freight forwarders serve as a one-stop shop for the necessary steps of completing the exportation or importation process. Since the signature of a customs broker is required by existing rules, finding a customs broker to sign specific documents is another value-added service provided by forwarders. For instance, an exporter would rely on forwarders who have demonstrable capacity to pick up, ferry and transport cargo from the firm's warehouses to designated ports, and to prepare all the required shipping documents including the export declaration forms. It is only after all of the documents have been

prepared that a licensed customs broker come into the picture, and that is because his/her signature is needed.

A respondent from a large import-export firm stated that the mandatory use of customs brokers can be minimized or totally removed. This is because given that it seems that the customs broker's role is merely to formalize the transaction by affixing his/her signature on the documents, customs brokerage can be integrated into the services of the freight forwarders. The respondent believes that minimizing or doing away with the role of the customs brokers will expedite the process of exportation or importation. Under the current practice, the freight forwarders themselves contact the brokers for signatures. Because exporters or importers have no direct link to the brokers, the former have no idea nor information on whether documents and computations prepared by customs brokers conform to the requirements of the BOC and other government agencies; instead, traders rely on forwarders to do the necessary computations. When asked what would be lost in the trade facilitation system if the use of brokers is minimized or eliminated, the respondent stated that no value-added would be lost since the only service rendered by brokers is signing the documents before these are submitted to the BOC. The respondent also stated that at the end of the day, the freight forwarders serve as the exporters'/importers' overall representative in transacting with customs brokers and the BOC. As such, freight forwarders can readily assume the roles and responsibilities of the customs brokers since the former take charge of preparing the documents and directly coordinate with the exporting or importing firm. With the freight forwarders' help, the trader prepares the cargo and the accompanying documents (e.g., packing list, invoices) and leaves the rest of the other activities to the forwarders (e.g., dealing with the BOC and the custom brokers for the required clearances and signatures). In effect, the freight forwarders render a much more comprehensive service than customs brokers in facilitating trade transactions.

The sentiments of the exporter-importer respondent were echoed by a forwarder-firm interviewed for this research. According to the forwarder-firm, despite the availability of customs brokers, forwarders are preferred by traders when it comes to preparing and complying with the BOC requirements. Although RA 9280 or the Customs Brokers Act of 2004 states that only licensed customs brokers can transact with the BOC, the forwarder-respondent claimed that it is really the forwarders that submit the signed documents to the BOC and see to it that the documents are processed. The only thing that is really needed from the brokers is their signature, which certifies the accuracy of the information (e.g., tax computation) indicated in the declaration form. The respondent further claimed that brokers play a very minimal role as agents of trade facilitation. The bulk of trade facilitation services are actually performed by freight forwarders which are in charge of efficiently transporting goods. A disadvantage of using customs brokers in facilitating exportation is that they do not have representatives or maintain counterparts abroad to receive and double check export cargo once it reaches its port of destination abroad. On the other hand, international logistics companies with representatives in ports of major destination have this distinct advantage.

The forwarder firm-respondent added that prior to 2004, there was no law mandating the use of customs brokers. Previously, customs brokers were just part of the freight forwarding sector. However, the Customs Brokers Act of 2004 made their role mandatory. The respondent believes that logistics companies can very well do the job assigned to customs brokers even if the Customs Brokers Act were to be repealed since logistics companies used to perform customs brokerage services prior to 2004. The claim that customs brokers are the experts on the computation of taxes and duties is contentious, according to this respondent. Forwarders who prepare import or export documents have in their employ expert staff who can compute the right amount of duties and taxes due to the government prior to seeking the customs brokers' signature. In theory, the customs brokers should double-check whether the computations are correct, but in practice, it is generally observed that their actual duties do not go beyond signing the documents. The respondent also noted that it is still the customs examiner who has the final say on whether the proper duties and taxes have been computed and imposed on a cargo. Although the customs brokers can serve as the trader's representative to double check the accuracy of tax and duty computations, the forwarder firm-respondent stated that they can also provide the same service to traders.

b. On the value added of customs brokers to small traders

A respondent from a small importing firm was also interviewed. This firm happens to be a direct user of customs brokers. According to the respondent, the reason for not hiring a freight forwarder is that it is usually cheaper for a small firm to hire a customs broker than a freight forwarder. The hired customs broker usually becomes the small firm's overall service provider. For this respondent, the most important advantages of hiring customs brokers are their familiarity with the customs processes and personal connections in the BOC that enables them to move goods easily. However, the respondent revealed that she does not rely on the professional help of a customs broker in preparing the documents for signature (by the customs broker) and in computing the duties and taxes due to the government, instead the respondent uses the guidelines and computation formula provided in the BOC website.

c. On the accreditation of importers

According to all the respondents, assistance in the accreditation of importers is not a service that can be done only by customs brokers. Freight forwarding companies can also facilitate the accreditation of traders. Assistance in the accreditation is actually another value-added service that freight forwarding firms offer to their clients.

Nevertheless, the respondents claimed that redundancies in the accreditation process exist. They recognize that accreditation is important as it serves as a risk management tool and as a means to weed out bogus importers and smugglers. However, they deem that the required documents for accreditation are voluminous and some are even redundant. The respondents believe that such inefficiency will not only lead to a costly and slower trade

process, but it will also create an incentive for smuggling. For them, the long list of requirements is acceptable only when it is the first time for the firm to be registered and accredited. Accreditation is an annual process and requiring the same documents for renewal of accreditation goes against the spirit of efficient trade facilitation. According to them, the whole accreditation process can take two to three months, and sometimes even as long as one year. They recommend that the accreditation requirements during renewals be not as strict as during first-time application, i.e., the firm should not be asked to re-submit the same documents required before. They claim that what should be required during renewals is a mere updating of the company profile. This suggestion has also been raised during the roundtable discussion.

d. On the reduction of costs as immediate benefit of minimizing the use of customs brokers

The respondents pointed out that minimizing the role of customs brokers can be beneficial to both exporters and importers because this could result in minimizing costs arising from brokerage fees. According to them, the fees charged by brokers can be very high. Customs Administrative Order (CAO) 1-2001 contains the schedule of brokerage fees based on the value of the goods—the higher the value of the imported or exported good, the higher the brokerage fee. However, it is not strictly followed in practice. Because no ceiling has been made on what the customs broker can charge in practice, following the value-based schedule could mean very huge fees and some traders are unwilling to pay huge fees for one signature per entry. In cases like these, the brokerage fee becomes contingent upon the negotiation between the customs broker and the firm (or the firm's forwarder). Fees which are deemed commensurate to the value-added services rendered, rather than the value of the good, are more palatable to the traders.

5 Comments and Insights

The stakeholder engagement process was very interesting because it demonstrated the difficulty of implementing reforms given the presence of groups with self-interest. The research team noted that the customs brokers, whose interests will be adversely affected by proposed customs modernization reforms wherein their roles will be minimized, were very vocal during the roundtable discussion while the government representatives were not as vocal. The divergence in views and the urgency of conducting follow-up bilateral conversations could not have been more felt by the research team if not for the actual experience of seeing and hearing opposing views being discussed, albeit diplomatically, during the roundtable discussion. Moreover, the customs brokers see themselves as very important facilitators of trade, but separate conversations with the direct users revealed that the latter do not see the brokers' importance on the same level. Given this experience, we conclude that conversation with stakeholders is a very effective research methodology and should be used more often.

The conversations with stakeholders, conducted through a roundtable discussion and bilateral discussions (i.e., interviews), employed as a research methodology in this case study proved to be very effective in eliciting issues and insights that would not have surfaced from desk research and pro forma surveys alone. The frank and honest exchange of views has been made possible through this face-to-face approach facilitated by the senior members of the research team. On the other hand, the holding roundtable discussions and bilateral conversations with a limited number of participants do not yield the representative views of a given respondent class, e.g., importers and exporters. However, the purpose of the conversations is to probe and elicit those insights and opinions that could not be shared through the faceless medium of a pro forma survey.

The primary question on the importance of customs brokers in trade facilitation can be answered through the insights of the direct users of the brokerage services—the importers and exporters. While their views are not representative of the universe of exporters and importers in the Philippines, the views expressed by these respondents provide important and direct information that has been useful for the purposes of this cases study. The case study clearly points toward a declining relevance of the customs brokers' services in an environment where customs administration is modernizing, computerization is replacing the traditional, direct interaction of brokers with BOC staff, and a more transparent customs administration is emerging to efficiently process a significantly growing volume of trade transactions. It will be more efficient and consistent with trade facilitation to allow traders to use various and modern options for releasing or shipping their goods. Customs brokers' services are just now one of several options for trade facilitation. Understandably, a threatened profession such as brokering mounts resistance in the face of such changes.

Customs brokers have a right to be heard and make known their stand to protect their own interest. They take the Customs Brokers Act of 2004 as their shield or defense against any attempt to dilute or minimize their role in the customs administration process. However, their

legalistic stand somewhat collides with the policymakers' attempt to modernize customs administration. The bill that they vehemently oppose, that is, the proposed Customs Modernization and Tariff Act, is intended to introduce greater efficiencies in customs and trade. It is recognized that a modernizing and growing economy demands more efficient institutions, innovations, and new technologies that may disrupt the ordinary course of business even as they introduce greater efficiency to government agencies and private firms. Those disruptive changes also have distributional consequences and this is what customs brokers fear: loss of jobs and reduction in incomes. A more positive outlook on modernization should trigger among customs brokers a paradigm shift, namely, that a modernized customs administration and trade facilitation process will necessarily create new opportunities for those adept and flexible enough to adjust to changing market conditions. As an upside of modernization, more efficient trade facilitation will create a higher volume of trade and, therefore, new demand for the type of expertise in rules and regulations that customs brokers claim they have.

On the other hand, proponents of customs modernization must also recognize that there is an existing law which protects customs brokers, that is, the Customs Brokers Act of 2004. It is necessary to ensure that the proposed Customs Modernization and Tariff Act is not inconsistent with existing laws. Typically, new legislation provides for a repealing clause that is supposed to eliminate any possible inconsistency with existing laws.

There is no doubt that the BOC should prioritize the modernization of customs administration in the country. But the BOC can be side-tracked by the criticisms it is receiving, e.g., failing to meet its revenue collection targets. The BOC is one of two major revenue collecting agencies, the Bureau of Internal Revenue being the other one. Every year the oversight agencies task these two bureaus with revenue collection targets. In explaining its revenue collection effort, the BOC likes to draw attention to the regime of low or near-zero tariffs under a liberalized trading environment. However, the primary indicator used to gauge the BOC's performance is its revenue collection effort. The BOC and oversight agencies need to consider that the role of the BOC is evolving under a globalized and liberalized trading environment especially in view of the ASEAN Economic Community where tariff walls will be archaic and a thing of the past. In this scenario, revenue collection should not be the primary indicator of good performance by a customs agency. A good indicator of performance is the timely and efficient facilitation of the volume of trade.

Annex 1 – Guide Questions Used in the Stakeholder Engagement Process

Questions for Government Representatives

1. What are the roles of government in ensuring that customs brokerage activities result in better logistics and greater trade facilitation?
2. What market failures in the customs brokerage sector adversely impact logistics and trade facilitation?
3. What key laws and regulations must customs brokers be very familiar with in order to perform their functions? What reforms in these laws and regulations are currently being proposed and what objectives will these reforms try to address? In your view, are these proposed reforms sufficient or is there a better way to address the objectives?

Questions for Customs Brokers

1. What are the roles of customs brokers in ensuring that customs brokerage activities result in better logistics and greater trade facilitation?
2. What government failures in the customs brokerage sector adversely impact logistics and trade facilitation?
3. What key laws and regulations must customs brokers be very familiar with in order to perform their functions? What reforms in these laws and regulations are currently being proposed and what objectives will these reforms try to address? In your view, are these proposed reforms sufficient or is there a better way to address the objectives?

Questions for Direct Users of Customs Brokerage Services

For the Importers

1. What are your views on how well customs brokers are currently performing trade facilitation tasks?

2. Given that the trend now is to minimize the mandatory use of customs brokers (e.g., principle in the Revised Kyoto Convention, some provisions⁹ in the Customs Modernization and Tariff bill in the Philippines (House Bill 4788)), what are your views on the need for the mandatory use of customs brokers? For what types of transactions will they be most needed and for what types of transactions could other third parties or declarants perform the usual brokerage services?
3. In your view, is the use of third parties or declarants other than customs brokers beneficial for the importers as a whole? If yes, in what sense is this beneficial? If no, what would be lost in a system wherein the mandatory use of customs brokers is minimized?
4. Kindly describe the current accreditation process for importers. Accreditation of importers is seen as a risk management tool in other countries. Do you agree with this view? What are your views on the current accreditation process in the Philippines? Are there areas which can be improved? If yes, what would you suggest to make those improvements possible?
5. The latest WTO Trade Policy Review (2012) makes the following statements about the Philippine import licensing system: "The Philippines' licensing system remains complex, and fees vary by product and are collected by the agency granting the licence. Moreover, the system is extensive and complex." Do you agree with these statements? If yes, kindly give more details and examples of the complexities of the import licensing system as you know it. In your view, what benefits do importers get from the National Single Window system (NSW)? Are there still redundancies in the import clearance process despite the existence of the NSW? Kindly point out recent improvements in the import licensing system, if you know any.

For the Exporters

1. For what types of export-related activities do you use customs brokers? What are your views on how well customs brokers are currently performing trade facilitation tasks?
2. Given that the trend now is to minimize the mandatory use of customs brokers (e.g., principle in the Revised Kyoto Convention, some provisions in the Customs Modernization and Tariff bill in the Philippines (House Bill 4788)), what are your views on the need for the mandatory use of customs brokers? For what types of transactions will

⁹ The organization of customs brokers have at least three issues with the bill: (i) in Section 102, the definition of customs brokers is not in the list; (ii) in Section 110, when the declarant is a firm, it may authorize any responsible officer to make the declaration in its behalf and the use of licensed customs broker would be "optional"; and (iii) in Section 1330, "third parties" (i.e., logistics providers, importers, exporters, customs brokers, carriers, among others) can release the shipment as long as they are entrusted and authorized by the importer, and therefore a third party is not necessarily a customs broker.

they be most needed and for what types of transactions could other third parties or declarants perform the usual brokerage services?

3. In your view, is the use of third parties other than customs brokers beneficial for the exporters as a whole? If yes, in what sense is this beneficial? If no, what would be lost in a system wherein the mandatory use of customs brokers is minimized?
4. Kindly describe the current accreditation process for exporters. What are your views on the process of accrediting Filipino exporters? Are there areas which can be improved? If yes, what would you suggest to make those improvements possible?
5. Kindly describe the current export permit/clearance procedure. Would you say that the procedure is simple, moderately complex, or complex? If you find it complex or moderately complex, kindly give more details and examples of the complexities of the procedure as you know it. In your view, what benefits do exporters get from the National Single Window system (NSW)? Are there still redundancies in the export permit/clearance process despite the existence of the NSW? Kindly point out recent improvements in the export permit/clearance process, if you know any.