

Llanto, Gilberto M.; Navarro, Adoracion M.; Detros, Keith C.; Ortiz, Ma. Kristina P.

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Toward Informed Regulatory Conversations and Improved Regulatory Regime in the Philippines: Logistics Sector and Trade Facilitation

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Philippine Institute for Development Studies
Surian sa mga Pag-aaral Pangkaunlaran ng Pilipinas

Toward Informed Regulatory Conversations
and Improved Regulatory Regime
in the Philippines: Logistics Sector
and Trade Facilitation

Gilberto M. Llanto et al.

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For comments, suggestions or further inquiries please contact:

The Research Information Staff, Philippine Institute for Development Studies

5th Floor, NEDA sa Makati Building, 106 Amorsolo Street, Legaspi Village, Makati City, Philippines

Tel Nos: (63-2) 8942584 and 8935705; Fax No: (63-2) 8939589; E-mail: publications@pids.gov.ph

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Towards Informed Regulatory Conversations and Improved Regulatory Regime in the Philippines: Logistics Sector and Trade Facilitation

Gilberto M. Llanto, Adoracion M. Navarro,
Keith C. Detros and Ma. Kristina P. Ortiz¹

Abstract

This study articulates the results of the research team's conversations with regulators and desk review of policies in the sectors affecting logistics and trade facilitation in the Philippines. The study covers air transport, land transport, maritime transport, logistics services, and customs services. Successes in regulatory reforms as well as the remaining restrictions to better logistics and trade facilitation surfaced from the conversations with regulators and the analysis of existing rules and regulations. Many of the remaining restrictions need to be addressed through amendments to existing laws and even enactment of new laws. This is the case in the following restrictions: limit on foreign equity participation, moving international government cargoes only through flag carriers, cabotage restriction, and the port regulator acting as an operator. Other remaining restrictions can be addressed through investments, which is the case in capacity-constrained airports and congested Metro Manila roads, and through improvements in operations, which is the case in customs administration.

Key words: ASEAN Economic Community, logistics, trade facilitation, customs, air transport, maritime transport, land transport, regulation

¹ Gilberto M. Llanto is the President of the Philippine Institute for Development Studies (PIDS); Adoracion M. Navarro is a PIDS Senior Research Fellow; Keith C. Detros and Ma. Kristina P. Ortiz are PIDS Research Assistants. The authors thank the Economic Research Institute for ASEAN and East Asia (ERIA) for supporting the conduct of this research. This paper, along with other papers from ASEAN members on the topic "Towards Informed Regulatory Conversations and Improved Regulatory Regime in ASEAN: Logistics and Trade Facilitation", will also be released by ERIA as a discussion paper.

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1 Introduction

This study articulates the results of conversations with regulators and desk review of policies in the sectors affecting logistics and trade facilitation in the Philippines. It also provides an overview of the current regulatory regime affecting logistics and the current practices of government agencies involved in trade facilitation. To the extent possible, the study also traces how these current regulations and practices have evolved. Successes in regulatory reforms as well as the remaining restrictions to better logistics and trade facilitation surfaced from the conversations with regulators and the analysis of existing rules and regulations.

This study 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). Sector coverage is based on the ERIA's definition of "logistics sector", which was defined as consisting of air transport, land transport, maritime transport, and logistics services. Customs services are also included in the project as these are the forefront services in trade facilitation. The Philippine research team, just like the other country research teams, implemented a survey-interview of government agencies in the covered sectors to elicit information on the regulatory landscape and to determine the remaining border and behind-the-border restrictions in logistics and trade facilitation. The survey questionnaire used was designed the ERIA.

The paper is organized as follows: after this introduction, section 2 describes the research methodology; section 3 provides an overview of the regulatory landscape in the sectors studied; section 4 discusses the successes made in sectors wherein reforms are in a more advanced stage; section 5 discusses the remaining gaps and challenges; and section 6 concludes and provides some recommendations.

2 Research Methodology

The research methodology that the Philippine research team used is in-depth interview using a template survey questionnaire. The research team also asked follow-up questions that were not included in the ERIA-designed questionnaire in order to seek clarification or augment the ticked off survey answers with more details. For some questions wherein the answers seemed incomplete or unclear, the information was supplemented by desk research and cross-checking with industry observers. In many cases, the team did follow-up visits to and phone interviews with the respondents. This whole process of guided survey-interview with follow-up visits is what is referred to by ERIA as "regulatory conversation".

The results of the survey-interviews on restrictions helped the research team identify the challenges and gaps in logistics and trade facilitation. These results also served as inputs to the

ERIA team in Jakarta that is constructing trade restrictiveness indexes for the Philippines and other ASEAN member-states, which ERIA intends to release in the final report of the AEC Scorecard Phase III Project.

The respondents in the survey-interviews are officials and staff from the following government agencies:

Table 1. Government Agencies Consulted in the Survey-Interviews

Government Agency	Mandate/Function
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.
Civil Aeronautics Board (CAB)	The Civil Aeronautics Board (CAB), an attached agency of the Department of Transportation and Communications (DOTC), is mandated to promote, regulate and develop the economic aspect of air transportation in the Philippines. It issues the licenses of domestic and international airlines and controls competition within the sector.
Civil Aviation Authority of the Philippines (CAAP)	An attached agency of the DOTC, the Civil Aviation Authority of the Philippines (CAAP), has responsibility of restructuring of the civil aviation system, the promotion, development and regulation of the technical, operational, safety, and aviation security functions under the civil aviation authority.
Department of Public Works and Highways (DPWH)	The DPWH functions as the engineering and construction arm of the Government. It is mandated to undertake: (a) the planning of infrastructure, such as national roads and bridges, flood control, water resources projects and other public works; and (b) the design, construction, and maintenance of national roads and bridges, and major flood control systems. It is tasked to continuously develop its technology for the purpose of ensuring the safety of all infrastructure facilities and securing for all public works and highways the highest efficiency and quality in construction.
Land Transportation Franchising and Regulatory Board (LTFRB)	The LTFRB is mandated to promulgate, administer, enforce, and monitor compliance of policies, laws, and regulations of public land transportation services. Its main concern is public utility franchising. The LTFRB is agency also attached to the DOTC.

Government Agency	Mandate/Function
Maritime Industry Authority (MARINA)	MARINA is also an attached agency of the DOTC. MARINA is tasked to integrate the development, promotion and regulation of the maritime industry in the country. Its mandate includes regulation and accreditation of ships and maritime enterprises, policy planning and development, as well as enforcement of maritime rules and regulations.
Philippine Shippers Bureau (PSB)	The PSB is mandated to promote and protect the common interests of Philippine exporters, importers, and other commercial users of water transport, and to undertake appropriate measures to develop trade through economical and efficient carriage of merchandise. It is attached to the Department of Trade and Industry (DTI).

Respondents from the Bureau of Customs, were asked about import procedures, the National Single Window (NSW) system, and other customs processes. Respondents from the logistics sector regulatory agencies were asked about restrictions on operations, investments and labor mobility. For each question in the survey questionnaire, respondents must tick off the appropriate answer from the choices provided. Respondents were also asked to give details on their answers. The accomplished questionnaires are in Annex 1.

The process of conducting regulatory conversations was a very good learning experience for the Philippine research team. Relative to straight surveys, the interview process guided by questionnaires and the succeeding follow-up interviews indeed resulted in enriching conversations. The analysis of the issues in trade facilitation and logistics could not have been deeper if not for the insights gathered during these conversations.

3 Overview of the Regulatory Landscape

Logistics Services – Freight Forwarding Business

The freight forwarding business component of the logistics services industry is not a highly regulated industry. Prices are not regulated and entry and exit are dictated by market forces. Entry is only lightly regulated through accreditation.

The regulation for the freight forwarding industry can at best be described as light-handed regulation wherein accreditation of service providers is the primary regulatory requirement. Accreditation in this sense is defined by the government as "a legal recognition conferred by the Philippine Shippers' Bureau - Department of Trade and Industry upon an entity authorizing it to engage in sea freight forwarding business" (Philippine Shippers' Bureau Administrative Order 06). Since it is an authorization, a firm cannot operate a sea freight forwarding business without it.

The government entity in charge of this light-handed regulation is the Philippine Shippers' Bureau (PSB), which is a bureau under the Department of Trade and Industry (DTI), a cabinet level government implementing agency. The PSB's mandate is to promote and protect the common interests of Philippine exporters, importers, and other commercial users of water transport, and to undertake appropriate measures to develop trade through economical and efficient carriage of merchandise. The accreditation process allows the PSB to have a system and database for carrying out this mandate.

The legal framework for the PSB mandate can be traced from its initial setup through Presidential Decree (PD) 165 enacted in 1973 and then amended by PD 833 in 1975. The PSB was known at the time as the Philippine Shippers' Council. Eventually, the PSB was established as a regular bureau of the DTI by virtue of Executive Order (EO) 514 issued on March 26, 1992.

PSB Administrative Order (AO) Number 6 issued on November 23, 2005 provides the latest guidelines on the accreditation process and defines the following as objectives of the accreditation system:

- a. Lay down the minimum standards and requirements under which covered firms may legally do business;
- b. Upgrade the quality of services, capabilities, resources and expertise of the covered firms in order that they may meet the demands of the Philippines' global trade and upsurging domestic trade; and
- c. Curtail acts and practices inimical to the fast growth of the freight forwarding industry and prejudicial to the interests of Philippine shippers.

The PSB also conducts mediation proceedings to resolve complaints and disputes between and among shippers, freight forwarders, shipping lines, and other transport service providers. The nature of complaints usually include non-delivery, loss and damage to cargo, overcharging, delay in delivery, unethical conduct, non-payment of fees and charges and maritime fraud.

The firms that are subject to the PSB accreditation process can be categorized into three types: non-vessel operating common carrier, international freight forwarder, and domestic freight forwarder. Per PSB definition, a non-vessel operating common carrier is an entity that provides, without owning or operating a vessel, a point-to-point service, which may include several modes of transport. It may also undertake consolidation of less-than-container load shipments (i.e., it may act as a cargo consolidator) and issue a corresponding transport document. An international freight forwarder is a local entity that acts as a cargo intermediary and facilitates transport of goods on behalf of its client without assuming the role of a carrier. It can function as a break bulk agent. It can also perform other forwarding services, such as booking cargo space, negotiating freight rates, preparing documents, advancing freight payments, providing packing or crating services, trucking, warehousing, engaging as an agent or representative of a foreign non-vessel operating common carrier or cargo consolidator, and other related undertakings. A domestic freight forwarder is an entity that facilitates and provides the transport of cargo and distribution of goods within the Philippines on behalf of its client.

The current accreditation process outlined by AO 6 involves applying in writing and under oath, submitting the necessary documents, and paying the filing and processing fee. Branch offices of the applicant firm must also be accredited, and each and every branch of the firm must be accredited first before such firm can legally engage in business. The Certificate of Accreditation is valid for two (2) years. After the validity of the Certificate of Accreditation has lapsed, a firm has to apply for renewal of accreditation to continue operating.

The Certificate of Accreditation, however, may be suspended or ultimately revoked by the PSB depending on the gravity of violation of the firms. Annex 2 details the schedule of sanctions and penalties as provided by AO 6. Further, Section 31 of AO 6 states that the Certificate of Accreditation may be automatically revoked in case of a change in the relationship of business partners that materially interrupt the course of business.

Maritime Transportation

Regulation in this sector is undertaken by the Maritime Industry Authority (MARINA). It is mandated to carry out effective supervision, regulation and rationalization of the organizational management, ownership and operations of all water transport utilities and other maritime enterprises. It was created through PD 474 enacted in 1974. By virtue of EO 546 series of 1979, it was attached to the Department of Transportation and Communications (DOTC) for supervision.

At present, the general legislation that governs maritime transport industry competition is Republic Act (RA) 9295 or the Domestic Shipping Development Act of 2004. This law also

provides the legal basis for cabotage restriction. Although some regulatory challenges persist, the sector is more liberalized and deregulated than it was before the 1990s.

Air Transportation

There are two categories of regulatory activities in the Philippine air transportation sector: (i) regulation of commercial aviation; and (ii) regulation of airports and enforcement of air traffic rules. These two regulatory activities were historically undertaken by only one entity--an office under the then Department of Commerce and Communications created by Legislative Act No. 3909 in 1931.

Eventually, the Civil Aeronautics Commission was created in 1946 through Administrative Order No. 7 to undertake the first category of regulatory activities. This is now known as the Civil Aeronautics Board (CAB), which is mandated by RA 776 enacted in 1952 to "regulate, promote and develop the economic aspect of air transportation in the Philippines and ensure that existing CAB policies are adapted to the present and future air commerce of the Philippines. The CAB issues a Certificate of Convenience and Necessity (CPCN) that allows a domestic or international airline to operate in the Philippines.

The regulator that emerged for the second set of regulatory activities was the Civil Aeronautics Administration, which was created through EO 94 in 1947. RA 776 reorganized the Civil Aeronautics Administration in 1952 and then it became the Air Transportation Office in 1987 through EO 125-A. In 2008, RA 9497 abolished the Air Transportation Office and, in its place, created a regulator with corporate attributes and powers called the Civil Aviation Authority of the Philippines (CAAP).

Land Transportation

For land transport services supporting the logistics supply chain (e.g., trucking services), the Land Transportation Franchising and Regulatory Board (LTFRB) is the economic regulator. The LTFRB was set up under EO 202 issued in 1987. Economic regulation covers regulation of routes and issuance of franchise to operate called a Certificate of Public Convenience.

The evolution of the current LTFRB and its mandate can be summarized as follows:

Table 2. Evolution of the LTFRB

Regulatory Entity	Year created
Coastwise Rate Commission	1902
Supervising Railway Expert	1906
Board of Public Utility Commissioners	1913

Regulatory Entity	Year created
Public Utilities Commission	1917
Public Service Commission	1926
Division of Land Transportation (as one of Specialized Regulatory Boards)	1972
Board of Transportation	1979
Land Transportation Commission	1985
Land Transportation Franchising and Regulatory Board	1987

Source: LTFRB website. <http://www1.lfrb.gov.ph/main/aboutus#1> (accessed on March 15, 2013).

The LTFRB applies no restrictions on equipment usage, rental of vehicles or fleet size provided that companies applying for franchise comply with the necessary requirements. For application for Certificate of Public Convenience, pertinent documents that companies must submit include: (i) proof of Filipino citizenship; (ii) proof of public demand; (iii) proof that the proposed public service will promote public interest in a proper and suitable manner; and (iv) evidence of financial capability of the firm. Additional requirements from trucks-for-hire exist, namely: (i) valid hauling contract; (ii) local government unit (LGU) zoning clearance for the location of the garage; and (iii) barangay (i.e., smallest LGU classification in the Philippines, akin to "village") clearance for the location of the garage. There are no restrictions on equipment usage and size of fleet, which depend on the application and specific demand contract as submitted by the applicant for a franchise, LTFRB, however, examines the appropriateness of the equipment before granting approval of the franchise (e.g. whether the trucks to be used by the applicant are appropriate for carrying the specific cargo being applied for such as perishable goods, liquefied petroleum gas, etc.). LTFRB also regulates the age of the utility vehicles (maximum age limit for such vehicles). For trucks-for-hire, LTFRB sets the limit at between 25-30 years.

Regulating weight limits is not covered by LTFRB regulation. The Department of Public Works and Highways (DPWH) enforces rules on weight limits. The legislative basis for imposing weight limits is RA 8794 enacted in 2000 to impose a tax called motor vehicle user's charge on owners of all types of motor vehicles. Per DPWH rules, a truck is considered 'overloaded' if: (i) it exceeds 13,500 kg load limit per axle; and (ii) it exceeds the gross vehicle weight (GVW) limit as provided under R.A. 8794. In Metro Manila, the implementation of the GVW limit is being deferred because DPWH is working with Philippine Ports Authority (PPA), Department of Trade and Industry (DTI), and other stakeholders on the synchronization of weighing operations and finalization of the GVW limits for each truck/trailer type. However, the GVW limit is enforced in other areas of the country. There were reported violations of the GVW limit and national data as of 2011 shows that 32.2% of the vehicles that have been weighed were overloaded.

Customs Services

Citing a World Economic Forum-Gartner, Inc. report, Parayno (2004) described that the Philippines' Bureau of Customs (BOC) undertook significant reform and modernization programs between 1992 and 1998. The accomplishments during the period include:

- Implementation of a new computerized customs processing system called ASYCUDA++
- Physical modernization and improvement of customs facilities
- Introduction of risk analysis and threat assessment procedures in lieu of 100% inspection
- Introduction of paperless, cashless, and queue-less clearance processes
- Partnerships with business associations to assist in customs processing (e.g., designation of the Philippine Chamber of Commerce and Industry as managers of Community Trading Centers)
- Establishment of a Management Information System and Technology group

However, Parayno (2004) also reported that the 1992-1998 reform and modernization momentum was not sustained. For example, while the hardware contractor was able to extend the geographic reach of the network to more ports and customs stations, the coverage of the application system stagnated. Financial resources also ran dry and there was a lack of steady source of funds for the maintenance and further development of the modernization program.

To sustain the improvements, a computerization improvement program was introduced in 2005. The program had the following components: import and assessment system; automated export documentation system; automated bonds management system; raw materials liquidation system; import and export support system; BOC Portal; exports processing system; funds monitoring system; and resource and operations management system. The BOC also initiated the Electronic to Mobile (e2m) Customs Project in 2005. The e2m Customs aims for the development of a dynamic and faster end-to-end cargo clearance process eventually through the use of mobile broadcasting and internet/electronic data interchange connectivity (Aldaba, et al., 2011).

The setting up of a National Single Window (NSW) was also initiated in 2005, as directed in EO 482 series of 2005. The NSW was to be developed in two phases: Phase 1 for permits and clearances required by government agencies and Phase 2 for the integration of the BOC database with the NSW. The agencies included in Phase 1 are the Sugar Regulatory Administration, Bureau of Animals Industry, Bureau of Plant Industry, National Food Authority, Bureau of Internal Revenue, Bureau of Foods and Drugs, Philippine Economic Zone Authority, Bureau of Customs, Board of Investments, and Bureau of Product Standards. BOC representatives, during an interview by the Philippine research team for this study, stated that they have identified 40 agencies that should be connected to the NSW. Of these agencies, which are responsible for the issuance of permits, licenses and certificates, 30 have already been connected. They also reported that the remaining 10 agencies, which serve as gateway for data and statistical information such as the National Statistics Office and the Bangko Sentral

ng Pilipinas, will be covered in the second phase of NSW implementation. Thus, Phase 2 of NSW will cover both the integration of the BOC database with the NSW and connecting 10 more agencies. For the Phase 2 project, the BOC reported that competitive bidding was finished in March 2012 but implementation has not yet started due to certain procurement issues.

4 Successes Achieved

The maritime transportation sector has made significant progress in liberalization and deregulation. Llanto and Navarro (2012) describe the evolution of regulatory reforms in the maritime transport industry as a response to calls for liberalization and deregulation. Over the years, MARINA and the executive branch of government issued several rules aimed to: (i) liberalize route entry or exit; and (ii) deregulate shipping rates. The evolution of reforms can be traced in Table 3 below.

Table 3. Liberalization and Deregulation in the Philippine Maritime Transport Industry

Route Entry/Exit Liberalization	Shipping Rates Deregulation
<p>MARINA Memorandum Circular (MC) No. 71 (22 October 1992)</p> <ul style="list-style-type: none"> • Entry of new/ additional operators in established routes/links allowed if <ul style="list-style-type: none"> - cost-effective, competitive or superior service is provided - improved quality of service and/ or innovative/ technologically advanced shipping service is introduced • No limit on vessel replacement capacities • Flexibility provided for cargo liner operation to alter frequencies, ports of call and swap/substitute vessels <p>MARINA MC No. 80 (08 November 1993)</p> <ul style="list-style-type: none"> • liberalized further the control of entry into and exit out of the industry by prescribing that <ul style="list-style-type: none"> - any route shall have a minimum of two operators in order to provide competition 	<p>MARINA MC No. 46 (19 May 1989)</p> <ul style="list-style-type: none"> • abolition of ad valorem rates / adoption of 3/10% valuation surcharge to cover insurance premiums • reclassification/upgrading of basic commodities class • deregulation of second class passage rates <p>MARINA MC No. 57 (25 October 1990)</p> <ul style="list-style-type: none"> • deregulation of reefer, transit and livestock rates • abolition of 3/10% valuation surcharge • adoption of fork tariff system, initially set at +/-5% <p>MARINA MC No. 67 (06 May 1992)</p> <ul style="list-style-type: none"> • institution of automatic fuel adjustment mechanism

Route Entry/Exit Liberalization	Shipping Rates Deregulation
<ul style="list-style-type: none"> - all routes served by only one operator shall be open for entry by additional operator(s) - to encourage entry into developmental routes, an operator who pioneers in the provision of service in such route shall be authorized to charge market-accepted rates for five years, after which the continued authorization of such rates shall be evaluated by MARINA <p>Executive Order (EO) No. 185 (28 June 1994)</p> <ul style="list-style-type: none"> • reiterated the MC 80 policy of opening up all routes and encouraging entry to developmental routes • in addition to monopolized routes, cartelized routes are included in the category of routes that shall be open for entry by additional operators <p>MARINA MC No. 106 (06 April 1995)</p> <ul style="list-style-type: none"> • reiterated the policy of minimum two operators in any route and made easier the entry in routes served for at least five years • newly-acquired vessels granted flexibility of entry into any route, subject to certain conditions • entry into developmental routes encouraged by way of rates incentives • liberalized vessel rerouting, amendment of frequencies/schedules, vessel swapping/ substitution 	<ul style="list-style-type: none"> • widening of fork tariff range to +10% / - 15% <p>EO No. 213 (28 November 1994)</p> <ul style="list-style-type: none"> • further deregulation of passage rates for all passenger-carrying vessels • exemption of vessels catering to tourism from the requirement of allocating 50% of passenger capacity for third class accommodation • deregulation of cargo shipping or freight <p>MARINA MC No. 117 (2 October 1996)</p> <ul style="list-style-type: none"> • deregulation of all commodities class except for non-containerized basic commodities • exempting Department of Tourism-accredited vessels from allocating 50% of their passenger capacities to 3rd class accommodations • deregulation of passage rates for DOT-accredited vessels serving tourist destinations <p>EO No. 170 (22 January 2003)</p> <ul style="list-style-type: none"> • reduced transport cost roll-on-roll-off (RORO) vessel transport through <ul style="list-style-type: none"> - elimination of cargo handling charges - elimination of wharfage fees - shift from commodity classification to lane meter in determining freight charges • defines a policy for RORO-road terminal integration system <p>Republic Act 9295, “Domestic Shipping Development Act” (May 2004)</p> <ul style="list-style-type: none"> • The law categorically stated what

Route Entry/Exit Liberalization	Shipping Rates Deregulation
	previous executive issuances instructed, that domestic ship operators are authorized to establish their own domestic shipping rates provided that effective competition is fostered and public interest is served.

Sources: for laws and rules prior to 1998 – Lorenzo, Emerson. 1998. "The Domestic Shipping Industry of the Philippines: A Situation Report," Maritime Industry Authority (unpublished report); for laws and rules after 1998 – Official Gazette of the Republic of the Philippines.

There had also been major accomplishments in reforms in the air transportation sector, primarily, liberalization and deregulation. The privatization of the Philippine Airlines (formerly the national flag carrier) in 1992 facilitated the liberalization of commercial aviation. Currently, the government no longer has any ownership share in Philippine Airlines. The liberalization and deregulation of air transport carrier services was then carried out in 1995. The enforcement instrument was Executive Order (EO) 219 series of 1995, which directed that: (i) at least two international carriers shall be designated official carriers; (ii) domestic air transportation routes or links served by only one operator shall be opened for entry by additional operators; and (iii) passage rates and other charges shall be deregulated for routes or links operated by more than one common carrier.

The liberalization and deregulation paved the way for the entry of more players in commercial aviation. Currently, there are four low-cost carriers that have both domestic and international services, namely, Air Philippines, Cebu Pacific, Sea Air, and Zest Air. Three international low cost carriers are also flying to and from the Philippines, namely, Jetstar, Tiger Airways, and Air Asia.

5 Remaining Gaps and Challenges

The following discussion describes the remaining border and behind-the-border restrictions that surfaced in the responses of interviewees and the research team's review of policies, rules and regulations.

Logistics Services

Relative to best practices, there are still a few remaining investment restrictions in the logistics services industry despite the light-handed treatment given to it by regulators. For instance, foreign logistics service suppliers must be represented by a local agent. Foreign principals and cargo consolidators abroad must have their Philippine counterparts or agents act as local freight forwarders and these counterparts must be accredited by the Philippine Shippers' Bureau (PSB) as international freight forwarding firms. A maximum of 100 percent foreign equity participation is allowed for an international freight forwarding firm provided that the capital investment of said firm is at least US\$200,000. For domestic freight forwarding firms, the maximum foreign equity participation is 40 percent while the remaining 60 percent must come from Philippine nationals, as indicated in the Corporate Code of the Philippines.

There is also a restriction on operations with respect to the international shipping of government cargoes. Presidential Decree (PD) 1466, enacted in 1978, mandates that the exportation and/or importation of all government cargoes, as well as private cargoes paid from the proceeds of loans, credits or guarantee from government financial institutions, must be carried by Philippine flag vessels. The term "Philippine flag vessels" as used in PD 1466 refers to vessels which are duly registered in the Philippines and are owned or controlled, or chartered by Philippine citizens or by a corporation or other entity owned or controlled by citizens of the Philippines.

With respect to mobility of skilled labor, there are no licensing requirements for foreign nationals but there are a few restrictions on the length of stay. The stay of foreign executives, senior managers or staff is limited by PD 442 or the Labor Code of the Philippines. PD 442 requires any alien seeking employment in the Philippines to obtain an employment permit from the Department of Labor and Employment (DOLE). The DOLE implements this provision in the law through specific rules prescribing requirements for application and issuance of Alien Employment Permits (AEPs). An AEP is valid for one year or co-terminus with the duration of employment, consultancy services or other modes of employment or term of office which in no case shall exceed five years. Thus, the usual permit is for one year, which can be extended up to 5 years. A requirement for a longer stay will need an application for a new permit after the validity of the last permit has lapsed. The same requirement for an AEP is applicable in the case of temporary entry for employment. Temporary visitors can stay for sixteen months and extension of stay is allowed provided proper approvals are secured. Extension of stay up to 24 months will need the approval of the Chief of the Immigration Regulation Division of the Bureau of Immigration. Extension of stay beyond 24 months will need the approval of the Commissioner, who is the head of the Bureau of Immigration. The same restrictions on the length of stay of foreign nationals apply to other sub-sectors of the logistics sector.

Maritime Transportation

Foreign vessels generally cannot provide domestic services, as stipulated in RA 9295 and its Implementing Rules and Regulations (IRR). Chapter 3, Section 6 of RA 9295 states that “No foreign vessel shall be allowed to transport passengers or cargo between ports or place within the Philippine territorial waters, except upon the grant of Special Permit by the MARINA when no domestic vessel is available or suitable to provide the needed shipping service and public interest warrants the same.” MARINA Memorandum Circular (MC) No. 105 further defines the circumstances allowing the Special Permit as follows: (i) there is no existing vessel operating in the proposed route/area of operation; (ii) there is no available local vessel to transport the cargo to meet the shipping requirement; (iii) the proposed vessel is contracted by private/public entities; and (iv) in the case of vessel carrying or bringing in foreign tourists, operation calls at domestic ports is part of its itinerary. Moreover, the vessels to be used must not be more than 15 years old from date of launching and must be classed by a recognized international classification society.

Nationality requirement applies to the ship crew. Under MARINA MC No. 182, all ships registered with MARINA must be completely manned by Filipino crew.

In Philippine ports, operation and regulation are usually mixed. Regulatory activities (e.g., setting of rates for berthing, anchorage, docking, wharfage, groundhandling, break bulk cargo handling, concessions, etc.) are usually conducted by port authorities who are themselves in charge of port operation. They are independent of the DOTC. The foremost port authority is the Philippine Port Authority (PPA). It directly manages 114 ports, which consist of 21 "base ports" and 93 "terminal ports" located in different parts of the Philippine archipelago. Other port authorities exist. The ports of Cebu are under the Cebu Port Authority (CPA). The Subic Freeport is under the Subic Bay Metropolitan Authority. The Port of Irene is under the Cagayan Economic Zone Authority (CEZA). The Mindanao Container Terminal in Cagayan de Oro is under the Phividec Industrial Authority. Ports under the new classification called Road-RORO terminal system (RRTS) are owned by either a private entity or an LGU; privately owned ports in the RRTS are regulated by the PPA while LGUs regulate the rates in their own ports. There are also LGU-managed and regulated municipal ports which are usually DOTC-funded feeder ports/landings turned over to the LGUs upon completion of construction. There are also fishing ports managed and regulated by the Philippine Fisheries Development Authority.

The PPA applies a “one port, one handling company” policy and, thus, the cargo handling and ground handling services are controlled by monopolies in PPA-owned ports. This is also the usual practice in LGU-operated ports. Regulation by contract is usually applied for regulating monopolies in port services².

² Time constraint prevented the research team from gathering evidence about whether or not this is also the case in other port authorities in Cebu, Subic, Irene, and Cagayan de Oro.

Private ports are generally allowed to handle cargo but they are required to pay supervision fees to the PPA. The PPA is authorized by its charter provided by PD 857 to collect supervision fees.

Air Transportation

At present, the Philippines has open skies agreements with two ASEAN countries, Vietnam and Thailand. Among non-ASEAN countries, the Philippines has open skies agreement with China and the United States (US). In the case of the agreement with China, the use of Chinese airspace is restricted by the Chinese military. The US and the Philippines have an uneven open skies agreement. Philippine carriers can have unlimited number of flights to only five points in the US while US carriers can have unlimited number of flights anywhere in the Philippines.

Infrastructure limitations also exist. According to CAB and CAAP, the Ninoy Aquino International Airport (NAIA), the country's premier international gateway has limited runway capacity and infrastructure to accommodate the growing air traffic. For example, the 7am to 9pm take-off and landing slots are considered as "very limited". NAIA also has limited landing slots and terminal space.

CAAP states that there are no legislative nor regulatory restrictions on foreign aviation firms to provide own or third-party ground-handling services such as aircraft parking, refueling or passenger handling. There are also no legislative nor regulatory restrictions on foreign aviation firms to provide own or third-party cargo-handling and warehousing facilities. However, the major constraint is the lack of airport space in NAIA, which makes such services unattractive to foreign investors.

Land Transportation

The restrictions on hours of operation of land transport services are usually imposed by LGU authorities. In Metro Manila, the restrictions on hours of operations are enforced by the Metro Manila Development Authority (MMDA). It is called the Unified Vehicular Volume Reduction Program (UVVRP) which restricts both public and private vehicles from using all national, city, and municipal roads in the metropolitan area from 7:00 a.m. to 7:00 p.m. based on the last digit of the vehicle's license plate. For example, a vehicle license plate ending in 5 or 6 is prohibited from using major Metro Manila roads every Wednesday, from 7:00 a.m. to 7:00 p.m. Prohibition days do not include Saturdays, Sundays and official public holidays. Cargo trucks are exempted from the UVVRP but they continue to be covered by the specific regulations concerning truck bans as imposed by the MMDA and LGUs. In Metro Manila, a truck ban is implemented from 6:00 a.m. to 9:00 a.m. and from 5:00 p.m. to 9:00 p.m. every day except Sundays and holidays on specific roads and highways. Conduct passes for exemption from the truck ban may be granted to heavy vehicles on a limited basis (e.g. trucks delivering petroleum, heavy vehicles carrying perishable goods, etc.).

Customs Services

On import licensing, some goods still require import licensing, although these are for phytosanitary and quarantine clearances that fall under WTO general exemptions related to public safety, security, public morals, and the like. **Annex 3** provides a description of how the Philippines determines when an item is freely importable, prohibited, or regulated. **Annex 3** shows that basically, regulations and restrictions do not come from the Bureau of Customs (BOC) but from respective government agencies (e.g., Department of Agriculture, Sugar Regulatory Agency, etc.).

During the interviews conducted by the research team, BOC representatives revealed that their main task, in so far as the regulations and restrictions described in **Annex 3** are concerned, is merely to enforce what has been mandated by law, that is, for importers to comply with the regulations and restrictions issued by those other agencies. Follow-up interviews with importers and exporters, on the other hand, revealed a very complex process for getting clearances and permits, which leads to costly delays in obtaining such clearances and permits. The importer and exporter respondents view the import and export licensing procedure as a necessary process to ensure that the cargoes are safe and legal. But the problem lies in the different requirements imposed by government agencies and the tedious and time-consuming processing of permits and licenses. Bureaucratic “red tape” often delays the processing and release of the licenses, making obtaining a license a complex and costly procedure. Redundancies in requirements have also been reported. For instance, government licensing agencies still require importers or exporters to present certain documents that have been already submitted to the BOC (e.g., mayor’s permit, tax clearance, etc.). The respondents also claimed that those government agencies should only require information that are directly related to the goods being applied for import or export licenses.

The BOC reported that necessary permits from other agencies can be obtained online but this can happen only if the concerned government agency is already connected to the NSW. Follow-up interviews with importers and exporters revealed that they welcome the NSW and the computerization of the lodgment of entries, which are generally viewed as important reforms. However, they think that there are still redundancies because hard copies of the documents logged in electronically still need to be submitted to the BOC. This practice defeats the purpose of electronic filing which is to facilitate the submission and processing of import/export documents, thereby resulting in greater efficiency in transactions and savings to importers/exporters.

6 Some Recommendations on the Way Forward

The remaining gaps and challenges with respect to trade facilitation are not easy to address when these would require changes in current Philippine laws. The results of regulatory conversations and analyses that the research team undertook reveal that such changes or amendments to existing laws and even enactment of new legislation are necessary. The foreign equity restriction in domestic companies, for instance, has been a long-standing challenge and addressing this will require changes in the current Corporate Code of the Philippines and Constitutional amendment. It is noted that public discussions of this issue show how the restriction has constrained investments in the country.

The restriction on moving international cargoes imposed by PD 1466 is another obstacle requiring the serious attention of policymakers. This may need new legislation or at least an amendment to the existing pertinent law. Enacted in 1978, PD 1466 requires that exported and imported cargoes by the government, as well as private cargoes that are paid from the proceeds of loans, credits or guarantee from government financial institutions, be carried by Philippine flag vessels. This protectionist policy leads to inefficient transport of tradables because of the absence of competition. Excluding foreign flag vessels from engaging in cargo transport deprives local businessmen of options to find the least-cost transport service that competition will ensure. Competition between Philippine flag vessels and non-flag vessels will yield better options to importers and exporters alike.

Lifting the cabotage restriction in maritime transportation will also require a legislative amendment. The cabotage policy is reflected in the Tariff and Customs Code of the Philippines. RA 9295 enacted in 2004 somewhat relaxed the restriction by specifying the special circumstances when foreign vessels can be allowed to transport local passengers and cargoes within Philippine territorial waters. However, relaxing the cabotage restriction depends on the discretionary action by bureaucrats who may have differing interpretation of the “special circumstances” when such foreign vessels can be allowed to ply domestic territorial waters. What is needed is a clear and unmistakable policy of competition in the domestic maritime transport markets.

The issue of a port operator being a port regulator at the same time needs to be addressed through legislative amendments too. The functions of port authorities are provided for in corporate charters passed by legislators. An important issue is the establishment of an independent regulator for the ports, leaving port operation under the responsibility of port operators.

In the air transport sector, the government has recently (in 2011) issued Executive Order 29, which opened up a few airports other than the Ninoy Aquino International Airport (NAIA) to foreign airlines. However, the intention to have a more liberal skies policy is constrained by the state of infrastructure in the concerned airports. It seems that foreign airlines could not take full

advantage of the liberal policy due to limitations in airport space, limited landing and take-off slots, navigational equipment, and others.

In land transportation, the imposition of truck bans adds to conveyance costs in the logistics supply chain. Policymakers have responded to traffic congestion in Metro Manila by imposing a truck ban. However, traffic congestion may be relieved and truckers spared the huge transaction cost imposed on them by connecting the North Luzon expressway and the South Luzon expressway through a recently proposed connector road that will encourage truckers and freight forwarders to bypass inner Metro Manila in transporting their cargoes. Moreover, strict enforcement of traffic rules and regulations is necessary to ensure a freer traffic flow.

With respect to customs modernization, stakeholders view it as a necessary step towards facilitating efficient, effective and secure trade in the country. In the regulatory conversations, a consensus emerged on the need to do away with redundant requirements and procedures and to rely on electronic means of transaction. However, customs brokers are wary of the proposed bill to modernize customs administration because they believe that it will marginalize their role in customs and trade facilitation.³ From the point of view of trade facilitation it will be more efficient to have various and modern options for helping importers in the release of import shipments as well as exporters in the outward shipment of goods.

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Annex 1 – Survey Responses

LOGISTICS INDUSTRY

Restrictions on Investment

Commercial presence (tick one)

- No restrictions on establishment.
- Logistics service suppliers must be represented by a local agent.
- Form of commercial presence is restricted through a specific type of legal entity or joint venture arrangement.

Details (eg describe which legal entities are allowed, and which not):

- *Logistics service suppliers must be represented by a local agent. Foreign principals and cargo consolidators abroad must have their Philippine counterparts/agents who act as local freight forwarders to consignees in the Philippines. These counterparts must be accredited by PSB, as well.*

Foreign equity participation

State the maximum foreign equity participation permitted in a domestic logistics firm:

Does this differ for investors from other ASEAN countries:

Details:

- *For domestic freight forwarding firms, the maximum foreign equity participation is 40% while the remaining 60% must come from Philippine nationals, as indicated in the Corporate Code of the Philippines.*
- *For international freight forwarding firms: PSB can allow up to 100% foreign equity provided that the capital investment of the said entity is at least USD 200,000.*

Licensing (tick one)

- No licensing requirements for the provision of transportation or logistics services.
 - Licensing requirements for the provision of transportation or logistics services.
- Details (eg describe which particular activities are subject to licensing restrictions, describe the nature of licensing requirements) :

- *Freight forwarding firms are categorized into three types: Non-Vessel Operating Common Carrier (NVOCC), International Freight Forwarder (IFF), and Domestic Freight Forwarder (DFF). These covered firms must be accredited first before they can engage in freight forwarding activities and/or operations.*
- *The details of the accreditation process are indicated in A.O. No. 6, Series of 2005, "Philippine Shippers' Bureau – Revised Rules on Freight Forwarding"*

Discriminatory licensing (ie licensing requirements that are more stringent for foreign than for domestic providers) (tick one)

- No discriminatory licensing for the provision of transportation or logistics services.
 - Discriminatory licensing for the provision of transportation or logistics services.
- Details (eg describe which particular activities are subject to discriminatory licensing restrictions, describe the nature of the discrimination) :

- *Accreditation requirements for international freight forwarders (IFF) are more stringent than that of domestic freight forwarders (DFF) primarily due to higher paid-up capitalization requirement and accreditation fees (i.e. higher by Php 1,000).*
- *Moreover, there are additional requirements needed in the accreditation process of IFF firms. They must have foreign principals and partner managers which process and acquire agency contracts.*

Factors affecting investment (tick all that apply)

- Takeovers are hindered by regulation.
- Investors must meet performance requirements.
- Establishment subject to an economic needs test (eg foreign providers can establish only if no

- domestic provider is available)
- Government screening of investment.
Details for each item (eg describe the nature of the performance requirements, or needs tests):
- *The respondent noted that investors in the freight forwarding industry are not subject to any performance requirements; they are basically screened by market forces. For instance, if a firm offers substandard services, customers would normally opt to choose other freight-forwarding firms.*
 - *Also, establishment of firms are not subject to economic needs test which determines if there is a further need for foreign providers. However, respondent noted that PSB has received remarks on having an oversupply of firms in the industry.*

Restrictions on Operations

Logistics services are supplied only through statutory government monopolies (tick all that apply):

- Cargo handling (air or port)
- Postal service
- State trading rights (ie certain commodities such as petrol or rice can only be traded domestically and/or internationally by statutory government monopolies)
- Container trucking
- Ground handling services (air or port)

Details for each item:

- *The cargo handling and ground handling monopolies are applicable only to maritime ports. The Philippine Ports Authority apply a “one port, one handling company” policy.*
- *The state trading right is applicable to rice importation. The National Food Authority, a government-owned and controlled corporation, is authorized to engage in rice importation.*
- *There are restrictions on operations in the **international cargo shipping of export and import of government cargoes**. Presidential Decree (PD) 1466 mandates that the exportation and/or importation of all government cargoes, as well as private cargoes that have financial benefits to the Philippine government, must be carried by Philippine flag vessels.*
 - *The term "Philippine flag vessels" as used in PD 1466 refers to vessels which are duly registered in the Philippines and are owned or controlled, or chartered by Philippine citizens or by a corporation or other entity owned or controlled by citizens of the Philippines.*

Restrictions on the Movement of People

Licensing requirements on management (tick one)

- No licensing requirements on directors and managers.
- Directors and managers must be domiciled in the foreign economy.
- Directors and managers must be locally licensed.
- At least 1 director or manager must be a national or resident.
- All directors or managers or at least a majority of them must be nationals or residents.
- Do these requirements differ if company is owned by investors from other ASEAN countries:
Details (eg give proportion or number of managers to which restriction applies):

Movement of people – Permanent (tick one)

- Executives, senior managers or staff of foreign-invested logistics firms can stay a period of more than 4 years.
- Executives, senior managers or staff can stay a period of up to 4 years.
- Executives, senior managers or staff can stay a period of up to 3 years.
- Executives, senior managers or staff can stay a period of up to 2 years.
- Executives, senior managers or staff can stay a period of up to 1 year.
- No entry of executives, senior management or staff.

Do these requirements differ if company is owned by investors from other ASEAN countries:
Details (eg describe types of personnel to which restriction applies):

- *The stay of foreign executives, senior managers or staff is limited by Presidential*

Decree (PD) 442 or the Labor Code of the Philippines. PD 442 requires any alien seeking employment in the Philippines to obtain an employment permit from the Department of Labor and Employment (DOLE). The DOLE implements this provision in the law through specific rules prescribing requirements for application and issuance of Alien Employment Permits (AEPs). An AEP is valid for one (1) year or co-terminus with the duration of employment, consultancy services or other modes of employment or term of office which in no case shall exceed five (5) years.

- *Thus, the usual permit is for 1 year and can be extended up to 5 years. A requirement for a longer stay will need an application for a new permit after the validity of the last permit has lapsed.*

Movement of people – Temporary (tick one)

- Temporary entry of executives, senior managers and/or specialists of foreign-invested logistics firms for over 90 days.
- Temporary entry of executives, senior managers and/or specialists up to 90 days.
- Temporary entry of executives, senior managers and/or specialists up to 60 days.
- Temporary entry of executives, senior managers and/or specialists up to 30 days.
- No temporary entry of executives, senior managers and/or specialists.

Do these requirements differ if company is owned by investors from other ASEAN countries:

Details (eg describe types of personnel to which restriction applies):

Nationals from a list of countries (a total of 151 countries) can stay without a visa for up to 21 days. Nationals from two countries can stay without a visa for up to 59 days. A 59-day Tourist Visa or Non-Immigrant Visa can also be secured, which can be extended after every two months, for up to 16 months.

Local employment requirements (tick one)

- No local employment requirements of hiring of local residents.
- Local employment requirements of hiring of local residents.

Details (eg describe nature of restriction):

Difficulty in firing (tick one)

- No noted burdensome practices required to layoff, severance packages, etc.
- Noted burdensome practices required to layoff, severance packages, etc.

Details (eg describe nature of restriction):

Presidential Decree 442 or the Labor Code of the Philippines says that an employer may terminate the services of an employee for just or authorized causes. Just causes include serious misconduct, willful disobedience, gross and habitual neglect of duties, fraud or willful breach of trust, commission of a crime and other analogous causes (Article 282 of the Labor Code). Authorized causes are of two types - business reasons and disease. The business reasons are installation of labor-saving devices, redundancy, retrenchment and closure or cessation of operation (Article 283 of the Labor Code). In the case of disease, the employee's disease should be of such a nature and at such a stage that it can no longer be cured within a period of six months even with medical attention (Article 284 of the Labor Code).

Respondent:

Philippine Shippers Bureau
DTI

MARITIME INDUSTRY QUESTIONNAIRE

Restrictions on Investment

1. Foreign commercial presence in shipping (tick one)

- Greenfield branches allowed
- Greenfield subsidiaries allowed
- Both greenfield branches and subsidiaries allowed
- No greenfield establishment allowed

Details (eg are there extra conditions on greenfield establishment) :

- *Greenfield branches are allowed under the limitations as provided by law.*
 - *Technically, full foreign commercial presence in the shipping industry is not allowed as provided by the Constitution, the Corporation Code, PD 761 of 1975 and RA 9295.*
 - *For ships, foreign equity allowed is limited to the 60-40 rule (60% Filipino, 40% foreign) on foreign equity participation.*
- *However, for foreign shipping agencies that serve as intermediaries, they can have 100% foreign ownership. They can enter the market under the provisions of the Foreign Investment Act of the Bureau of Investments provided they comply with the necessary requirements.*

2. Foreign mergers and acquisitions in shipping (tick one)

- Controlling stake in existing public (but not private) entity allowed
- Controlling stake in existing private (but not public) entity allowed
- Controlling stake in existing public and/or private entities allowed
- No controlling stake in existing entity allowed

Details (eg are there extra conditions on mergers and acquisitions) :

- *The general rule is still the 60%-40% Filipino-foreign nationality rule on capital stock and paid-up capitalization.*

3. Foreign equity participation

State the maximum foreign equity participation permitted in a domestic shipping firm:

Does this differ for investors from other ASEAN countries:

Details:

- *The maximum foreign equity participation is 40%.*

Restrictions on Operations

4. Cargo reservation (tick one)

- No restrictions on types of cargo that may be carried
- Restrictions on shipping government or State-owned enterprise cargos (eg requirement that they be shipped by national-flagged vessels)
- Restrictions on shipping private cargos (eg requirement that a certain proportion be shipped by national-flagged vessels)
- Restrictions on both government and private cargos

Do these requirements differ if ship or shipping company is from other ASEAN countries:

Details (describe nature of restriction):

- *Cargo reservation is restricted by PD 1466.*
 - *This is continually implemented by the Philippine Shipper's Bureau (PSB) of the Department of Trade and Industry (DTI).*
 - *PD 1466 requires that all government cargoes and those cargoes owned by private entities with government loan, credits and guarantees be loaded on RP-flag vessel, otherwise, a waiver must be secured from PSB whenever such vessels are not available and/or suitable.*

5. Cabotage restrictions (tick one)

- No cabotage restrictions (ie foreign vessels can supply internal point-to-point transport services)

- Restrictions on length of time cargoes can be carried.
- Foreigners that fly the national flag can provide domestic maritime services.
- Foreigners generally cannot provide domestic services.

Do these requirements differ if ship or shipping company is from other ASEAN countries:

Details (describe nature of restriction):

- *Foreign companies generally cannot provide domestic services, as stipulated in Republic Act (RA) 9295 and its Implementing Rules and Regulations.*
- *Chapter 3, Section 6 of RA 9295 states that:*
 - **Foreign Vessels Engaged in Trade and Commerce in the Philippines Territorial Waters.** - *No foreign vessel shall be allowed to transport passengers or cargo between ports or place within the Philippine territorial waters, except upon the grant of Special Permit by the MARINA when no domestic vessels is available or suitable to provide the needed shipping service and public interest warrants the same.*
- **Special Permits can be granted by MARINA.** *Foreign vessels are allowed temporarily to operate under the following circumstances as provided in MARINA Memorandum Circular (MC) No. 105:*
 - *There is no existing vessel operating in the proposed route/area of operation;*
 - *There is no available local vessel to transport the cargo to meet the shipping requirement;*
 - *The proposed vessel is contracted by private/public entities; and*
 - *In the case of vessel carrying or bringing in foreign tourists, operation calls at domestic ports is part of its itinerary.*
- **Special Permit Requirements (MC No. 105).** *All vessels to be temporarily utilized in the domestic trade with the issuance of SP/EP must comply with the following:*
 - *Must not be more than 15 years old from date of launching. However, this shall not apply to Philippine registered vessels and LPG carriers.*
 - *Must be classed by a recognized international classification society.*

6. General competition legislation (tick one)

- Existence of a legislative framework to regulate the behavior of shipping conferences or domestic shipping lines.
- Absence of a legislative framework to regulate the behavior of shipping conferences or domestic shipping lines.

Details (eg is the framework part of general competition legislation, is it special legislation just for maritime):

- *The general legislation that governs maritime industry competition in the Philippines is the RA 9295 or the Domestic Shipping Development Act of 2004.*
- *The Domestic Shipping Development Act of 2004 (Republic Act 9295) serves as a legislative framework insofar as it empowers MARINA to regulate anti-competitive behavior, e.g., draw up rules for the monopolized routes (Section 13), and modify, suspend, or revoke a license (Section 10). But the law does not specifically provide anti-trust provisions.*
- *There are other legislations that provide guidance to the country's maritime industry.*
 - *There is the bareboat chartering law as provided by PD 760 amended by PD 866 (extending the coverage to overseas shipping). It regulates the acquisition of ships through bareboat chartering scheme.*
 - *PD 1711 extended the law's implementation until 1999.*
 - *EO 438 and 667 gave the bareboat chartering law an indefinite extension.*
 - *RA 7471 and RA 9301 provides for the incentives for developing the overseas shipping industry.*
- **On safety standards and requirement.** *The safety standards and requirements are provided for in the legislations mentioned. However, for ships in the international trade there are no age nor size limitations provided the ship is classed by an internationally recognized classification society and such class is maintained by the vessel.*

7. Independent regulatory authority for SHIPPING (tick one)

- There is an independent regulatory authority that is independent of the operating entity (shipping company)?
- There is an independent regulatory authority that is independent of the Department of Transportation and Communications?
- There is an independent regulatory authority that is independent of the operating entity and Department of

Transportation and Communications (DOTC)?

There is no independent regulatory authority

Details (e.g. who is the authority, what is their relationship to the DOTC or operator(s)):

- *The **Maritime Industry Authority (MARINA)** is the agency responsible in integrating the development, promotion and regulation of the maritime industry in the Philippines. By virtue of EO No. 546, it is an attached agency of the Department of Transportation and Communications (DOTC). They are mandated to carry out effective supervision, regulation and rationalization of the organizational management, ownership and operations of all water transport utilities and other maritime enterprises.*

8. Independent regulatory authority for PORTS (tick one)

There is an independent regulatory authority that is independent of the operating entity (port operator)?

There is an independent regulatory authority that is independent of the DOTC?

There is an independent regulatory authority that is independent of the operating entity and DOTC?

There is no independent regulatory authority

Details (e.g. who is the authority, what is their relationship to the DOTC or operator(s)):

- *Regulatory activities (e.g., setting of rates for berthing, anchorage, docking, wharfage, groundhandling, breakbulk cargo handling, concessions, etc.) in Philippine ports are usually conducted by port authorities who are themselves in charge of port operation. They are independent of the DOTC.*
- *The Philippine Port Authority (PPA) directly manages 114 ports, which consist of 21 "base ports" and 93 "terminal ports". Other port authorities exist. The ports of Cebu are under the Cebu Port Authority (CPA). The Subic Freeport is under the Subic Bay Metropolitan Authority. The port of Irene is under the Cagayan Economic Zone Authority (CEZA). The Mindanao Container Terminal in Cagayan de Oro is under the Phividec Industrial Authority. Ports under the new classification called Road-RORO terminal system (RRTS) are owned by either a private entity or a local government unit (LGU); privately owned ports in the RRTS are regulated by the PPA while LGUs regulate the rates in their own ports. There are also LGU-managed and regulated municipal ports which are usually DOTC-funded feeder ports/landings turned over to the LGUs upon completion of construction. There are also fishing ports managed and regulated by the Philippine Fisheries Development Authority.*

9. Monopolized handling of port-related services at main port/land entry point (tick one)

No existence of port monopoly of port-related services.

Licences granted to limit number of cargo handlers.

Ports controlled by one authority.

Details (who can provide? does the situation differ at other major ports? minor ports?):

- *The Port Area of Manila hosts the two biggest base ports with international operations, namely, the Manila International Terminal (MICT) and the South Harbor. They are publicly-owned through the PPA. The International Container Terminal Services, Inc. (ICTSI), a consortium of private firms, manages and operates MICT through a twenty five-year contract with PPA. Although South Harbor is not under a long-term concession but is instead under the direct management of the PPA, cargo handling is currently exclusively contracted to a private firm, the Asian Terminals, Inc. (ATI).*

10. Container station and depot services (tick one)

No restrictions on foreign maritime firms to provide own or third-party container station and depot services.

Foreign maritime firms are subject to foreign equity, nationality or licensing requirements to provide container station and depot services.

Foreign maritime firms have no access to provide container station and depot services.

Do these requirements differ if maritime company is from other ASEAN countries:

Details (describe nature of restriction):

- *The general rule is still the 60%-40% Filipino-foreign nationality rule on capital stock and paid-up capitalization.*

11. Storage and warehousing (tick one)

- No restrictions on foreign maritime firms to provide own or third-party storage and warehousing services.
- Foreign maritime firms are subject to foreign equity, nationality or licensing requirements to provide storage and warehousing.
- Foreign maritime firms have no access to provide storage and warehousing services.

Do these requirements differ if maritime company is from other ASEAN countries:

Details (describe nature of restriction):

- *The general rule is still the 60%-40% Filipino-foreign nationality rule on capital stock and paid-up capitalization.*

12. Cargo handling (tick one)

- No restrictions on foreign maritime firms to provide own or third-party cargo handling services.
- Foreign maritime firms are subject to foreign equity, nationality or licensing requirements to provide cargo handling services.
- Foreign maritime firms have no access to provide cargo handling services.

Details (describe nature of restriction):

- *The general rule is still the 60%-40% Filipino-foreign nationality rule on capital stock and paid-up capitalization.*

13. Regulation of port services (tick all that apply; please answer for any of the top 3 international ports/points of entry)

- Terminal handling costs regulated by government (this is probably covered by above question on monopoly)
- Terminal handling costs are non-negotiable
- Terminals are restricted in the activities they can undertake (eg only container operations)
- Private ports are prohibited from handling general cargo
- Private ports able to handle general cargo on payment of a fee

Details for each item (describe nature of restrictions):

- *Regulation by contract is the procedure for terminal handling in Manila International Container Terminal (MICT) and North Harbor, both in the Port Area of Manila, as well as in Batangas International Port located south of Manila. The private contractors are International Container Terminal Services, Inc. (ICTSI) for MICT and Asian Terminals, Inc. (ATI) for North Harbor and Batangas International Port.*
- *Since regulation is done via contract terms, handling costs are not negotiable (they are set by contract) and terminals are restricted in the activities they undertake (also stipulated by contract).*
- *The item "Private ports able to handle general cargo on payment of a fee" are not applicable to the top three ports as these are not private ports. However, private ports are generally able to handle cargo and are required to supervision fees to the PPA. The PPA is authorized by its charter, Presidential Decree No. 857.*

Restrictions on the Movement of People

14. Nationality requirement on employees of foreign shipping companies (tick one)

- None
- Some

Details (describe the nature of restrictions):

- *The nationality requirement applies to the crew. Under MARINA Memorandum Circular (MC) No. 182, all ships registered under MARINA must be completely manned by Filipino crew.*
- *There is also a requirement that foreign nationals have employment permits.*
 - *For supernumerary employees of foreign shipping companies (referring to the movement of natural people), foreigners can have entry and temporary stay for one year which may be extended based on immigration laws. The Department of Labor and Employment issues the Alien Employment Permits (AEP).*

- *Requirements of AEP (DOLE Department Order 97-09, Series of 2009):*
 - *Duly accomplished Application Form;*
 - *Photocopy of Passport, with visa or Certificate of Recognition for refugees;*
 - *Contract of Employment/ Appointment or Board Secretary's Certificate of Election;*
 - *Photocopy of Mayor's Permit to operate business or in case of locators in economic zones, Certification from the PEZA or the Ecozone Authority that the company is located and operating within the ecozone; and*
 - *Photocopy of current AEP (if for renewal)*

15. Nationality requirement on Board of Directors of foreign shipping companies (tick one)

- None
- Some (There is an existing restriction)

Details (describe the nature of restrictions):

- *For Executive Officers and Board Directors of foreign shipping companies, it needs to be 100% Filipino by virtue of MARINA MC No. 181 and 182.*

Respondents:

Overseas Shipping Office and Domestic Shipping Office
MARINA

AIR TRANSPORT INDUSTRY

Restrictions on Investment

1. Government ownership (tick one)

- Government does not have majority ownership control, nor retain 'golden share' veto right, in 'national flag carrier'
- Government does not control the majority of the ownership, but retains 'golden share' veto right
- Government controls the majority of the ownership
- Government ownership share is zero
- Details (e.g. give government share in 'national flag carrier. Is there government ownership of other airlines?):

- *The government has no ownership shares left since the Philippine Airlines (PAL), once considered as the flag carrier of the Philippines, has been privatized.*

2. Foreign equity participation in domestic airlines (tick one)

- No cap: domestic market open to foreign investment/adopt principal place of business
- A cap greater than 50%
- A cap between 35% and 50% (inclusive)
- A cap less than 35%
- Foreign investment in airlines not allowed

Does this differ for investors from other ASEAN countries:

Details (please provide information from investment legislation, as well as provisions in withholding clauses of international air service agreements, i.e. whether exercise of traffic rights requires 'substantial ownership and effective control, or principal place of business):

- *Air transport is considered a public utility. Thus, constitutional restriction on ownership (60%-40% nationality rule) applies.*
- *Most bilateral agreements include the substantial ownership clause (60% ownership of local citizens).*
- *In the current ASEAN bilateral agreements, however, the restriction on substantial ownership and all other restrictions can be changed provided that it is allowed under a national law. Thus, for the Philippines, the change in ownership restriction needs both a constitutional amendment and an enacting law.*

3. Existence of low cost carriers (tick one)

- Has an established low cost carrier which has actively engaged in both domestic and international service provision
- Has a relatively new/small sized low cost carrier
- No low cost carrier

Details (how many? where from?):

- *There are 7 low cost carriers that are currently operating in the Philippines.*
 - *DOMESTIC: Air Philippines, Cebu Pacific, Sea Air and Zest Air*
 - *INTERNATIONAL: Jetstar, Tiger Airways, and Air Asia*

4. Number of effective passenger airlines (tick one)

NOTE: Effective passenger airlines are defined as airlines that have at least five aircraft and provide regular services. If one airline is wholly owned by another airline in the same economy, they are not regarded as effective competitors even though they operate separately.

- More than 5
- 3 to 5 (inclusive)
- 2 or fewer

Details (how many? where from?):

- Including the Philippine Airlines (PAL), there are eight (8) effective passenger airlines.
- The 7 low cost carriers that are currently operating in the Philippines:
 - DOMESTIC: Air Philippines, Cebu Pacific, Sea Air and Zest Air
 - INTERNATIONAL: Jetstar, Tiger Airways, and Air Asia

Restrictions on Operations

5. Multiple designation on international routes; Private airlines allowed to fly international routes (tick one)

- 2 or more carriers, including private carriers roughly have the equal right in being designated for flying international routes
- The flag carrier (usually government-owned) has priority in gaining international rights over domestic private carriers; or domestic private carriers are not eligible to fly international routes before fulfilling some conditions such as servicing domestic market for a certain period of time
- The flag carrier is predominantly the designated airline servicing international routes
 - *The Philippines has no “flag carrier”. Even though it has been privatized, the Philippine Airlines (PAL) is considered as the default ‘official carrier’ of the country.*
 - *The Civil Aeronautics Board can issue a Certificate of Convenience and Necessity (CPCN) that allows a domestic or international airline to operate in the Philippines. However, the CAB cannot provide privileges, e.g., tax exemption, that only a congressional franchise can grant.*
 - *Industry players know that there is no priority given to any carrier and that the granting of route entitlements undergoes hearings. If a route entitlement is unutilized for a period of 6 months, a reallocation hearing may ensue so that other domestic carriers can apply. If an international route becomes available and only one domestic carrier applies, the entitlement is automatically approved.*

6. Open skies agreement (tick one)

- Have signed and ratified an open skies agreement with more than 5 countries.
- Have signed and ratified an open skies agreement with 3 to 5 countries.
- Have signed and ratified an open skies agreement with 2 or fewer countries.
- Have not yet signed an open skies agreement.

Details (agreements with ASEAN partners, how many with non-ASEAN partners):

- *For ASEAN countries, Philippines has open skies agreements with Vietnam and Thailand, but both are still limited.*
- *For non-ASEAN countries, Philippines has open skies agreement with China and US.*
 - *–The use of Chinese airspace is restricted by the Chinese military.*
 - *–The US and the Philippines have an uneven open skies agreement. US carriers can have unlimited number of flights anywhere in the Philippine. Philippine carriers have unlimited number of flights to only 5 points in the United States.*

7. Tick all that have been ratified by your country:

- The ASEAN Multilateral Agreement on Full Liberalisation of Air Freight Services:
 - Protocol 1
 - Protocol 2
- The ASEAN Multilateral Agreement on Full Liberalisation of Passenger Air Services:
 - Protocol 1
 - Protocol 2
- The ASEAN Multilateral Agreement on Air Services:
 - Protocol 1
 - Protocol 2
 - Protocol 3
 - Protocol 4
 - Protocol 5

- Protocol 6
- The ASEAN Framework Agreement on Multimodal Transport
- The ASEAN Framework Agreement on Inter-state Transport
- The ASEAN Framework Agreement on Goods in Transit
- Protocol 1
- Protocol 2
- Protocol 3
- Protocol 4
- Protocol 5
- Protocol 6
- Protocol 7
- Protocol 8
- Protocol 9

Details (eg when will outstanding agreements/protocols be signed?):

- *For the ASEAN Multilateral Agreement on Air Services, only Protocols 5 and 6 are yet to be ratified.*

8. Seventh freedom rights (tick one)

Definition: The right of an airline of one country to carry traffic between two other countries without the flight originating or terminating in its own country.

- Seventh freedom rights are granted to some foreign carriers.
- Seventh freedom rights are granted to some foreign carriers, for cargo only.
- The open skies policy does not include seventh freedom rights.

Details (just for ASEAN partners? for others?):

9. Cabotage restrictions

Definition: Cabotage is the right of an airline of one country to carry domestic traffic between two points within the territory of another country.

- Cabotage or eighth freedom rights are granted to some foreign carriers.
- Cabotage or eighth freedom rights are granted to some foreign carrier, for cargo only.
- The open skies policy does not include eighth freedom rights.

Details (just for ASEAN partners? for others?):

10. Take-off and landing slots (tick one)

- Sufficient allocation of take-off and landing slots.
- No or limited allocation of take-off and landing slots.

Details and source (ie in whose judgement):

- *The answer above is not entirely accurate, but it is for lack of choices. CAB pointed out that the choices should be as follows: no allocation, limited allocation, sufficient allocation. In the Philippines, there is limited allocation.*
- *Judgments are based on the terminal operators and airport authorities. Further, according to CAB and CAAP, the runway capacity and the infrastructures in place have limited capacity to accommodate the existing air traffic. In the case of NAIA for example, the 7am to 9pm take-off and landing slots are considered as "very limited". NAIA has limited landing slots and terminal space.*
- *NOTE: 'Limited slots' and 'no slots' are different categories.*

11. Ground-handling (tick one)

- No restrictions on foreign aviation firms to provide own or third-party ground-handling services such as aircraft parking, refuelling or passenger handling.
- Foreign aviation firms are subject to foreign equity, nationality or licensing requirements to provide ground-handling services such as aircraft parking, refuelling or passenger handling.
- Foreign aviation firms have no access to provide ground-handling services such as aircraft parking, refuelling or passenger handling.'

Details (describe nature of restriction):

- CAAP does not regulate ground handling services of the firms. CAAP licenses and regulates the load controllers.
- According to CAAP, the restriction is still on the constitutional nationality requirement (60% Filipino-40% foreign ownership). Another major constraint in the ground handling services is the lack of airport space which makes it unattractive for investors.

12. Cargo-handling and warehousing (tick one)

- No restrictions on foreign aviation firms to provide own or third-party cargo-handling and warehousing facilities.
- Foreign aviation firms are subject to foreign equity, nationality or licensing requirements to provide cargo-handling and warehousing facilities.
- Foreign aviation firms have no access to provide cargo-handling and warehousing facilities.

Details (describe nature of restriction):

- Basically there are no restrictions on cargo-handling and is based on the company's choice. Still, cargo-handling services are limited. Infrastructure capacity is also an issue.
- According to CAB, firms will only venture into ground-handling if they also have concessions.
- For warehousing, it could only prosper in the country if there is ample space and if hub operations also take-off. However, there is still limited demand for warehousing services and hub operations.

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Civil Aviation Authority of the Philippines

LAND TRANSPORT INDUSTRY

Restrictions on Operations

1. Equipment usage (tick one)

- No restrictions on equipment usage, rental of vehicles or fleet size.
 Restrictions on equipment usage, rental of vehicles or fleet size.

Do these requirements differ trucking company is from other ASEAN countries:

Details (describe nature of restriction):

- *The Land Transportation and Regulatory Board (LTFRB), the regulatory agency, has basically no restrictions on the equipment usage, rental of vehicles or fleet size provided that companies applying for franchise comply with the necessary requirements.*
 - *For application for Certificate of Public Convenience, pertinent documents that companies must submit include:*
 - *proof of Filipino citizenship*
 - *proof of public demand*
 - *proof that proposed public service will promote public interest in a proper and suitable manner*
 - *evidence of financial capability*
 - *Additional requirement for Trucks For Hire:*
 - *Valid Hauling Contract*
 - *LGU zoning clearance for the location of the garage*
 - *Barangay Clearance for the location of the garage*
- *There are no restrictions on equipment usage and size of fleet. These will depend on the application and specific demand contract as submitted by the applicant.*
- *LTFRB however checks for the appropriateness of the equipment before granting approval of the Certificate of Public Convenience (e.g. whether the trucks to be used by the applicant are appropriate to carry the specific cargo being applied for such as perishable goods, liquefied petroleum gas, etc.)*
- *LTFRB also regulates the age of the utility vehicles (maximum age limit for such vehicles).*
 - *For utility vehicles and taxis – 13 years*
 - *For buses – 15 years*
 - *For trucks for hire – by practice, LTFRB sets the limit between 25-30 years.*

2. Hours of fleet operation (tick one):

- No restrictions on hours of operation.
 Restrictions on hours of operation.

Details (describe nature of restriction):

- *There are no restrictions on the hours of fleet operations imposed by LTFRB. Privilege to operate is granted by the LTFRB but the Metro Manila Development Authority (MMDA) in the Metro Manila area, and local government units (LGUs) in their respective territorial jurisdictions may regulate the hours of operations (e.g. truck ban during certain hours of the day, say rush-hour).*
- *In Metro Manila, the restrictions on hours of operations are enforced by the Metro Manila Development Authority (MMDA). It is called the **Unified Vehicular Volume Reduction Program (UVVRP)** which restricts both public and private vehicles from using all national, city, and municipal roads in the metropolitan area from 7:00 a.m. to 7:00 p.m. based on the last digit of the vehicle's license plate.*
- *Ban days do not include Saturdays, Sundays and Official Public Holidays.*
- *Cargo trucks are exempted from the UVVRP but continue to be covered by the specific regulations concerning truck bans as imposed by MMDA and LGUs.*
- *In Metro Manila, truck ban is implemented from 6:00 a.m. - 9:00 a.m. and from 5:00 p.m. - 9:00 p.m. everyday except Sundays and Holidays on specific roads and highways.*
- *Truck ban conduct passes can also be granted to heavy vehicles on a limited basis (e.g. trucks delivering petroleum, heavy vehicles carrying perishable goods, etc.)*

3. Overloading (tick one):

- Weight limits exist and are enforced
- Weight limits exist and violations infrequent or geographically limited
- Weight limits exist but are rarely enforced
- Weight limits exist but are circumvented using informal payments
- Weight limits exist but no checking occurs
- No weight limits exist

Details (eg describe the extent of overloading problems):

- *A truck is considered 'overloaded' if:*
 - *It exceeds 13,500 kg load limit per axle.*
 - *It exceeds the gross vehicle weight (GVW) limit as provided under R.A. 8794.*
- *Prior to June 1, 2013, the law was not fully implemented in the National Capital Region due to ongoing negotiations. However, full implementation of the anti-overloading measures of the government as provided under R.A. 8794 is effective nationwide starting June 1, 2013.*
- *National data as of 2011 shows that 32.2% of the vehicles being weighed are overloaded.*

Respondents:

LTFRB

DPWH

CUSTOMS

IMPORT PROCEDURES

Performance (please note data on other dimensions of performance will be collected from other sources)

Clearance (please provide proportions):

Proportion of shipments cleared based on declaration (green channel):

- 26.40% (covering period: January 1 to December 31, 2012)

Proportion of shipments cleared based on review of declaration and supporting documentation (yellow channel):

- 48.13% (covering period: January 1 to December 31, 2012)

Proportion of shipments cleared based on scanning (blue channel):

- 0.06% (covering period: January 1 to December 31, 2012)

Proportion of shipments cleared based on physical inspection (red channel):

- 25.40% (covering period: January 1 to December 31, 2012)

Details (on what basis, or under what circumstances, do shipments get green lane treatment, and who decides):

- All the goods are classified to be in the green lane unless proven otherwise by the system
- Judgment is based on an electronic system developed by the Risk Management Office (RMO). RMO collects and consolidates inputs from other groups (i.e. Office of the Commissioner) regarding channel categorization of entries and sets the parameters.

Documentation

Import licensing (tick one)

- Import licences are not required.
- Some goods require import licences.
- All goods require import licences.

Details (what proportion/type of goods require import licences):

- License documentation depends on the type of good. For determining importability, goods are categorized into three:
 - (1) Freely importable goods
 - (2) Regulated goods (require import licenses)
 - (3) Prohibited or out-right banned goods
- In 2012, the value of regulated goods amount to approximately 0.03% of the total value of imported goods.

Local language (tick one)

- Local language is not used on customs documents
- Both English and local language is used on customs documents.
- Local language is used on customs documents.

Details (e.g. is English well-understood by customs officials?):

- Note: Questionnaire needs to be qualified and more specific. Not using the local language does not automatically entail the use of English. Though for the Philippines, this is the case.
- English is the only language being used on customs documents.
- English is well-understood by customs officials.

Inspections

Import restrictions (tick all that apply)

- Restrictions on weight.
- Restrictions on value of shipment.

- Restrictions on certain goods.
- Requirement that imports and exports be balanced.
Details for each item (describe restrictions and goods to which they apply):

- *Note: The question is too general. Several subcategories of restrictions can be classified under the question (i.e. for consumption, informal/informal entry, warehousing). Needs to be more detailed so respondents can provide a more specific answers.*
- *Basically, regulations and restrictions do not come from the Bureau of Customs (BOC) but from respective government agencies (DA, SRA, etc.). BOC only enforces such regulations as mandated by law.*
- *Restrictions on weight:*
 - *In-quota and out-quota system, measured in metric ton, is applicable to agricultural products. This also needs to comply with the 'minimum access volume import' requirement.*
- *Customs determine formal or informal entries based on the weight, not in commercial quantity; 12 dozens and below; 1 cubic meter and below; 300 kilos and below; USD 500 and below.*
- *Restriction on value of shipment:*
 - *There are certain goods that exceed a certain value; there is a need to file it under formal entry.*

Border Coordination and Clearance

Customs Electronic Data Interchange (EDI) for customs documentation for IMPORT (customs declaration and supporting documentation, such as waybill, manifest, certificate of origin, approvals by other agencies) (tick one)

- EDI processing for customs documentation is fully functional.
- EDI processing for customs documentation is available but not fully or universally functional.
- EDI processing for customs documentation is not available.
Details (if not fully functional, describe which documents, points of entry, etc are not covered):

- *The waybill and manifest are processed electronically/online.*
- *Certificate of Origin (CO) is processed manually.*
- *Permits as approved by other agencies are done online, but it depends if the respective government agency is already connected to the NSW.*
 - *40 government agencies are already connected to the NSW wherein 30 of these issue permits, licenses and certificates while the other 10 (i.e. NSO, BSP) serve as gateway for data and statistical information that are used by stakeholders (i.e. traders, Philippine government agencies).*

Customs Electronic Data Interchange (EDI) for customs documentation for EXPORT (customs declaration and supporting documentation, such as waybill, certificate of origin, pre-arrival information, approvals by other agencies) (tick one)

- EDI processing for customs documentation is fully functional.
- EDI processing for customs documentation is available but not fully or universally functional.
- EDI processing for customs documentation is not available.
Details (if not fully functional, describe which documents, points of exit, etc are not covered):

- *Only exports declarations are processed electronically, all other documentations are done manually.*

Harmonized Commodity Description and Coding System (HS) (tick one)

- HS or AHTN (ASEAN Harmonised Tariff Nomenclature) for customs classification is fully functional.
- Use HS/AHTN for customs classification, but customs officials can change the classification codes arbitrarily and intentionally.
- HS/AHTN for customs classification is not used.
Details (if not fully functional, describe problems):

- *The HS coding system is fully utilized but valuation/classification disputes arise not only*

because customs officials change codes arbitrarily and intentionally. According to an industry observer, there could be two sides to a valuation/classification dispute—one, the importer mis-declares the value or code to avoid restrictions or paying the proper amount of taxes, and two, the customs official changes the code to extract side payments. Thus, the second choice is also not strictly applicable. If it could be phrased differently and revised as "Use HS/AHTN for customs classification, but there are still instances when importers mis-declares the value/classification or customs officials change the classification codes arbitrarily and intentionally", then this is the applicable choice.

Customs operating hours (if more than one international port/border crossing, answer for top two) (tick one)

- Customs facilities are open 24 hours.
- Limited hours of operation at customs facilities, but open extended hours if requested.
- Limited hours of operation at customs facilities, such as closure on weekends or public holidays.

Details (if hours limited, describe in what way):

- *Lodgment of entries and submission of electronic manifests operate 24/7; whereas other Customs facilities operate on limited hours only.*
 - *However, other BOC departments such as the Custom's Base Service (boarding officers, inspectors, and guards) operate 24/7*
- *Some Customs facilities operate during weekends or public holidays, if needed or requested.*

Customs brokerage services (tick one)

- Firms are allowed to freely provide customs brokerage services.
- Customs brokerage services can only be provided in restricted areas or limited to individual citizens or a few firms.
- Regulations do not allow firms to freely provide customs brokerage services.

Details (if service provision is restricted, or licences not easy to obtain, describe how):

- *Private firms are allowed to freely provide customs brokerage services but they have to be accredited by the BOC.*

Customs efficiency

Improper penalties or fees (tick one)

- Improper penalties or fees are rare or non-existent.
- Improper penalties or fees are noted.
- Improper penalties or fees are common.

Details and source (iein whose judgement):

- *Note: Incriminating or leading questions. Assumes that the fees being collected are improper. Also, BOC notes that "fees" and "penalties" are basically different.*
- *Surcharges, fees and other penalties collected are sanctioned by law. All fees are collected in Peso. Examples are:*
 - *Container security fee – depends on the size of the container (USD5 for 20 foot containers converted to peso)*
 - *Super Green Lane Fee – highest accreditation of importers that are considered as compliant, they pay a certain fee every time they lodge an entry (P2500)*
 - *Import processing fee – P250 to P1000*
 - *Late arrival of manifests also incurs fees (manifests should be submitted 12hours before the arrival of the cargo).*

Discriminatory fees or inspection practices (tick one)

- Discriminatory fees or inspection practices are rare or non-existent.
- Discriminatory fees or inspection practices are noted.
- Discriminatory fees or inspection practices are common.

Details and source (eg if discrimination is applied, describe who it applies to, and in whose judgement is it applied):

- *There is a selectivity channel based on the RMO's risk factor criteria and parameters upon which "discrimination/discretion" is based. It is not based on a single person. Also, should other countries wish to impose other regulations (e.g. if ROK wishes to have all cargos going out of the PH to be X-rayed), then BOC complies. Further, if there is a blot on the track record of the importing party or there are conflicting statements amongst its documents, the RMO has the discretion to inspect the imported goods.*
 - *RMO formulates criteria and parameters based on other agencies' inputs, as well.*
- *"Examination" is different from "inspection". Fees exist only in the preparation process of the goods, not in the examination stage.*
 1. *Examination process refers to the physical verification of goods wherein BOC serves as the overseeing body*
 2. *Arrastre or inspection/preparation of goods (for examination): done by private firms (e.g. surveyors) accredited by BOC.*
 - *Accredited surveyors/brokers receive fees from the importers.*
- *Brokers only facilitate the release. Physical movement of goods/arrastre are rendered by private companies. Customs does the checking of the permits and the appraising.*

Express Delivery

De minimis level (please provide value)

Please give the de minimis level (threshold value of imports below which there is a waiver of duty)

Value in USD:

OR Value in other currency (please state currency):

- *Value is in Peso*
- *Waiver of duty and tax is less than PHP 10. This has been the value since the 1950's.*

NATIONAL SINGLE WINDOW

Is there a single point of entry for the submission of all data and information required to move goods across borders? (tick one)

- Pilot scheme (eg only at a few ports)
- Full implementation at most points of entry
- Full implementation at all points of entry

Details (describe where/how not fully implemented):

- *NSW is fully implemented at major points of entry.*
- *NSW is still on its Phase 1 which is still on permits and clearances.*
- *To clarify, under the Philippine customs setting, NSW and Customs System Operations are different. What is in the NSW is the processing of permits and clearances which is just one requirement of the whole customs process.*

How must the data be submitted? (tick one)

- Paper
- Electronically
- Mix of both

Details:

- *All data (permits, licenses and clearances) are submitted electronically.*

How is the data processed? (tick one)

- Entered into a single database for use by all relevant agencies here and overseas (eg Customs, Trade Ministry, Finance Ministry, Transport Ministry, Agriculture Ministry, Fisheries Ministry, Health Ministry?)
- Entered into two separate databases (or passed on twice) for different purposes?

- Entered into three separate databases (or passed on three times) for different purposes?
- Entered into four separate databases (or passed on four times) for different purposes?
- Entered into five or more separate databases (or passed on five or more times) for different purposes?

Details (for which agencies is data handled separately):

- *NSW database operates independently (i.e. processing of permits and licenses) from the Bureau of Customs (BOC)'s system.*
- *The second choice above applies except the phrase "or passed on twice". The NSW system is for permits and clearances. All other documentation and procedures are via the BOC's system. There is a plan to integrate the two systems.*

NOTE: In the Philippines, sections on Clearance and Release, Risk Assessment, Trade Regulation and Performance of the questionnaire are irrelevant to the existing NSW. They fall under the formal procedures of export and import operations.

Clearance and release (tick all that apply)

- There is a time limit for approval of declarations
- Actual performance is measured against target
- There is a fast-lane procedure for regular importers with a good track record
- Duty payment can be made by electronic funds transfer
- There is automatic release of goods once payment is received

Details for each item:

- *Note: According to the respondents, "Actual performance against target" is irrelevant to clearance and release as it is part of the revenue collection.*
- *There is a time limit for approval of declarations as indicated in the BOC Citizen's Charter.*
- *There is fast-lane procedure which also refers to the super green lane channel.*

Risk assessment (tick all that apply)

- There are clearly identified risk assessment criteria for cargo inspection
- Pre-arrival information used in risk assessment
- Selection for examination is done electronically, based on risk criteria
- X-ray equipment is used in examination
- Manual inspection is subject to time limits

Details for each item:

- *If tagged for X-ray by the system, then X-ray is warranted.*
- *Manual inspection is subject to time limit as indicated in the Citizen's Charter; it can be based on square root rule or odd/even rule.*
- *Much of the time goes to the preparation process (i.e. Arrastre services) by private firms, which seemingly slows down the whole process.*
- *Time of the actual release of goods is dependent on multiple factors such as availability of warehouses and equipment of Arrastre firms, truck bans, etc.*

Trade regulation (tick all that apply)

- Trade regulation is available online

How often is the website updated – please state (eg monthly, annually):

- *Website updates are done based on the discretion of the Customs Commissioner.*
- *Forex rates are updated weekly.*

- There is provision for online feedback from importers etc

- There is a telephone hotline for queries about procedures

- There is a formal system of consultation between Customs and industry participants (importers, freight forwarders, transport operators)

If yes, please give details (eg how often it is convened, who participates):

- *They convene upon request of concerned parties.*

- There is a system of appeals in Customs matters?

If yes, please give details (eg name of organisation, whether it is independent of Customs):

- *The system of Appeals in Customs matters is supervised by “Valuation and Classification Review Committee”*
- *Appeals regarding customs issues are provided by law, based on the Customs Tariff Code*

Further details for each item:

- *There is a brokers’ lounge which allows brokers to monitor the movement of the importers’ cargos.*
- *Online feedback is provided to the exporters/importers via the VASP.*
- *Value Added Service Providers (VASP): Consists of three accredited firms which help the BOC in its computerization initiatives and in its move towards more efficient operations regarding shipments of goods.*
 1. *Cargo Data Exchange Center, Inc.*
 2. *E-Konek Pilipinas, Inc.*
 3. *InterCommerce Network Services, Inc.*
- *The objective for having VASP is to avoid BOC being bombarded with phone calls and inquiries regarding the shipments.*

Performance (tick all that apply)

- Clearance times measured according to the World Customs Organisation’s time-release methodology

- The data is made public

Details for each item:

- *Every 3 years BOC conducts time-release study. The 2010 study was funded by Japan International Cooperation Agency (JICA).*
- *They also conduct peer review (every 3-5 years) which is co-sponsored by WCO and DTI.*

- *“The data are NOT made public” is not one of the choices. Nevertheless, the respondent’s initial answer “The data are made public” is incorrect because although the policy is to release data to the public, the 2007-2010 data were not released. According to the BOC, the methodology has to be reviewed first as there are differences in the determination of the time-release methodology.*

Respondents:

Management Information System and Technology Group
BOC

Exports Division,
Port of Manila
BOC

Formal Entry Division,
Port of Manila
BOC

Planning and System Development Service
BOC

System Management Division
BOC

Annex 2 – Schedule of Penalties and Sanctions for Freight Forwarding Firms

As provided by Section 41 of the PSB Administrative Order 06, Series of 2005.

Violation	Penalty/Sanction		
a. Engaging in or transacting business by a firm, operating either as a main, sole, or branch office, without prior accreditation.	Issuance of cease and desist order for the non-continuance of operation and a monetary fine of Php 50,000.		
b. Misrepresentation by a firm that it has subsisting accreditation.			
c. Using a subsisting accreditation by another with authority from an accredited firm.			
Violation	First Offense	Second Offense	Third Offense
d. Failure to display the valid and original copy of the certificate of Accreditation as required by Section 17 hereof.	Stern warning from PSB and violator's submission of a written voluntary assurance of compliance or discontinuance of the violation committed.	Fine of Php 1,000.	Revocation of accreditation certificate.
e. Transacting business through an accredited firm's representative without the required PSB ID as provided in Section 28 hereof.			
Violation	Period of Delay		Amount
f. Refusal/Failure to comply with any of the obligations mentioned in Rule VII hereof, or the submission of documents/s or paper/s which are false, or which contain false/misleading data.	1. Delay in the submission of a report not exceeding two (2) months from due date.		Php 1,000
	2. Delay exceeding two (2) months by but not exceeding four (4) months		Php 2,000
	3. Delay exceeding four (4) months by but not exceeding six (6) months		Php 4,000
	4. Delay exceeding six (6) months by but not exceeding eight (8) months		Php 6,000

	5. Delay exceeding eight (8) months by but not exceeding ten (10) months	Php 8,000	
	6. Delay exceeding ten (10) months by but not exceeding one (1) year	Php 10,000	
	7. Delay beyond one (1) year period	Php 12,000 and suspension of PSB accreditation for six (6) months	
	8. Non-compliance or submission of false/misleading reports	Php 10,000	
Violation	First Offense	Second Offense	Third Offense
g. Misrepresentation by the applicant, of any material fact in obtaining the accreditation, or any other certification/s or documents.	Fine:	Fine:	Revocation of accreditation certificate.
h. Transferring or authorizing of an accredited firm to another, in whatever manner, its accreditation.	If NVOCC = Php 40,000 If IFF = Php 20,000 If DFF = Php 2,500	If NVOCC = Php 200,000 If IFF = Php 100,000 If DFF = Php 12,500	
i. Refusal or failure of an accredited firm to comply with lawful orders/administrative issuances and/circulars of PSB.	and submission of written voluntary assurance of compliance or discontinuance of the violation committed.	and suspension of accreditation for a minimum of 6 months but not more than one year.	
j. Violation by covered firm of the Code of Conduct and Ethical Standards for Freight Forwarders in Section 35 hereof.			
k. Overcharging.			
l. Collecting and charging of fees not prescribed by PSB.			
m. Failure to deliver cargo as required in the transport document.			
n. Failure to deliver cargo to its rightful owner.			
o. Failure to comply with its contractual obligation to the shipper.			
p. Grant of Rebates.			

q. Delinquent freight forwarders.			
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Notes: NVOCC - non-vessel operating common carrier; IFF - international freight forwarder; DFF - domestic freight forwarder

Annex 3 – Basis for Determining Prohibited and Regulated Imports

A3.1 Prohibited and Regulated Import Products⁴

Classification of Imports

Before any importation into the Philippines can be made, the particular item or sub-item is identified within the Philippine Standard Commodity Classification Manual (PSCM) as to where the imported goods belong to. This commodity classification is the general basis for determining whether the item is freely importable, prohibited, or regulated.

- a. Freely Importable** - These are commodities, which importation is neither regulated nor prohibited. The importation may be effected without prior approval of or clearance from any government agency.
- b. Regulated Commodities** (See A3.2 in this Annex) - These are commodities which importation requires clearances/permits from appropriate government agencies including the Bangko Sentral ng Pilipinas (BSP).
- c. Prohibited or Banned** - These are commodities which importation is not allowed under the existing laws.

Conditionally Prohibited:

- Ammunitions, firearms
- Cinematographic films, photographs, paintings, drawings or other representation of any obscene/immoral character
- Heroin or other synthetic drugs

Absolutely Prohibited:

- Those specifically listed under **Section 101 of the Tariff and Customs Code of the Philippines**
- Used Clothing and Rags under Republic Act (RA) 4653, dated 06 June 1966
- Toy Guns under LOI 1264, dated 31 July 1982
- Right-Hand Drive Vehicles under RA 8506 dated 13 February 1998
- Laundry and Industrial Detergents containing hard surfactants under RA 8970 dated 31 October 2000

Tariff and Customs Code of the Philippines: Section 101

The importation into the Philippines of the following articles is prohibited:

⁴ Source: Department of Trade and Industry. Accessed from <http://www.dti.gov.ph/dti/index.php?p=214> on March 11, 2013.

- Dynamite, gunpowder, ammunitions and other explosives, firearms, and weapons of war, and parts thereof, except when authorized by law
- Written or printed articles in any form containing any matter advocating or inciting treason, or rebellion, insurrection, sedition, or subversion against the Government of the Philippines, or forcible resistance to any law of the Philippines, or containing any threat to take the life of, or inflict bodily harm upon any person in the Philippines
- Written or printed articles, negatives or cinematographic film, photographs, engravings, lithographs, objects, paintings, drawings, or other representation of an obscene or immoral character
- Articles, instruments, drugs and substances designed, intended or adapted for producing unlawful abortion, or any printed matter, which advertises or describes or gives directly or indirectly information where, how or by whom unlawful abortion is produced
- Roulette wheels, gambling outfits, loaded dice, marked cards, machines, apparatus or mechanical devices used in gambling or the distribution of money, cigars, cigarettes, or other when such distribution is dependent on chance, including jackpot and pinball machines or similar contrivances, or parts thereof
- Lottery and Sweepstakes tickets except those authorized by the Philippine government, advertisements thereof, and list of drawings therein
- Any article manufactured in whole or in part of gold, silver or other precious metals or alloys thereof, the stamps, brands or marks or which do not indicate the actual fineness of quality of said metals or alloys
- Any adulterated or misbranded articles of food or any adulterated or misbranded drug in violation of the provisions of the "Food and Drugs Act"
- Marijuana, opium, poppies, coca leaves, heroin or any other narcotics or synthetic drugs, which are or may hereafter be declared habit forming by the President of the Philippines, or any compound, manufactured salt, derivative, or preparation thereof, except when imported by the Government of the Philippines or any person duly authorized by the Dangerous Drugs Board, for medical purposes only
- Opium pipes and parts thereof, or whatever material
- All other articles and parts thereof, the importation of which is prohibited by law or rules and regulations issued by competent authority as amended by Presidential Decree (PD) No. 34

A3.2 List of Regulated Import Commodities and Administering Agencies/Bureaus

Government Agencies/ Issuing Permits/Clearance/ Legal Basis	Commodity Description/Commodity Group/ Tariff Heading (TH)
<p>Philippine Drug Enforcement Agency (PDEA) and Dangerous Drugs Board (DDB)</p> <p>Republic Act (RA) No. 9165 (The Comprehensive Dangerous Drugs Act of 2002) dated 7 June 2002</p>	<p>Essential Chemicals & Controlled Precursors; and Dangerous Drugs (Ketamine, Pseudoephedrine, Oripavine, and Amineptine)</p>
<p>Environmental Management Bureau (EMB)</p> <p>RA No. 6969 (The Toxic Substances, Hazardous and Nuclear Wastes Control Act of 1990) dated 26 October 1990</p>	<p>Cyanide, Mercury, Asbestos, Polychlorinated Biphenyl, Chlorofluorocarbon and other ozone depleting substances TH 2805.4, 2903, 2523, 2503</p>
<p>Department of Health - Bureau of Food and Drugs (DOH – BFAD)</p> <p>Executive Order No. 776 dated 24 February 1992 and Bureau Circular No. 03-A s.2000</p> <p>R.A. No. 8976 (Philippine Food Fortification Act of 2000) dated 7 November 2000</p> <p>R.A. No. 8172 (An Act for Salt Iodization Nationwide - ASIN) dated 20 December 1995</p>	<p>Semi-synthetic antibiotics (all form and salts of ampicillin, amoxicillin, and cloxacillin)</p> <p>Wheat Flour / TH 1101</p> <p>Iodized Salt / TH 2501</p>
<p>Energy Resource Development Bureau (ERDB)</p> <p>Section 104 of Presidential Decree No. 1464 (The Tariffs and Customs Code of 1978) dated 11 June 1978</p>	<p>Coal and lignite (excluding jet), whether or not pulverized, but not agglomerated / TH 2701, 2702</p>

Government Agencies/ Issuing Permits/Clearance/ Legal Basis	Commodity Description/Commodity Group/ Tariff Heading (TH)
National Bureau of Investigation (NBI) and Cash Department of the Bangko Sentral ng Pilipinas (BSP)	Color Reproduction Machines / TH 9009
Explosives Management Branch (EMB), Philippine National Police (PNP) Executive Order (E.O.) No. 522 (prescribing Rules and Regulations for the Control and Supervision of the Importation, Sale and Possession of Chemical Used as Ingredients in the Manufacture of Explosives and for Other Purposes) dated 26 June 1992	Chlorates, nitrates and nitric acid / TH 2829, 2834, 2808
Fertilizer and Pesticide Authority (FPA) Presidential Decree No. 1144 (Creating the Fertilizer and Pesticide Authority and Abolishing the Fertilizer Industry Authority) dated 30 May 1997 and FPA Pesticide Regulatory Policies and Implementing Guidelines, 2 nd Edition, 2001	All fertilizers, pesticides and other chemical products that are intended for agricultural use
Bureau of Import Services (DTI-BIS) E.O. No. 156 (Providing for a Comprehensive Industry Policy and Directions for the Motor Vehicle Development Program and Its Implementing Rules) dated 12 December 2002	Used motor vehicle under the no-dollar import program that is owned and for personal use by a returning resident or immigrant with a gross vehicle weight (GVW) not exceeding 3,000 kilograms (kgs) and must be left-hand drive Used trucks excluding pick-up trucks with GVW of 2.5 – 6 tons / TH 8709 Used buses with GVW of 6 – 12 tons / TH 8702

Government Agencies/ Issuing Permits/Clearance/ Legal Basis	Commodity Description/Commodity Group/ Tariff Heading (TH)
<p>E.O. No 156 and Department Administrative Order (DAO) No. 08 s. 2003</p> <p>LOI No. 1086 dated 25 November 1980</p> <p>E.O. No. 443 s. 2005 dated 5 July 2005</p> <p>LOI No. 1307 s. 2003</p>	<p>Brand new/Used automotive replacement parts and brand new motorcycle replacement parts [Note: All used motorcycle parts (except engine), including brand new motorcycle replacement chassis and frame, are not allowed for importation.] / TH 8702.9, 8703.9</p> <p>Used trucks for rebuilding purposes such as truck chassis, engine, body and cabin/cowl, transmission/drivelines, axles (front and rear) or steering system / TH 8701.1</p> <p>Used tires</p> <p>Used motor vehicle importation through donation by local government units</p> <p>Importation by all instrumentalities of the government</p>
<p>Department of Foreign Affairs (DFA)</p> <p>E.O. No. 156 dated 12 December 2002 and</p>	<p>Used vehicles for the use an official of the Diplomatic Corps</p>
<p>Philippine International Trading Corporation (PITC)</p> <p>LOI No. 444 (Promulgating Guidelines on Trade Socialist and Other Centrally-Planned Economy Countries) dated 9 August 1967, as amended by EO NO. 244 dated 12 May 1995</p>	<p>All commodities originating from the following socialist and centrally-planned economy countries (Albania, Angola, Ethiopia, Laos, Libya, Mongolia, Mozambique, Myanmar, Nicaragua and North Korea)</p>
<p>Maritime Industry Authority (MARINA)</p> <p>Memorandum Circular (MC) No. 104 dated 6 April 1995</p> <p>MC No. 121 dated 29 July 1997</p>	<p>Ships / TH 8901</p> <p>High Speed Craft / TH 8901.9</p>

Government Agencies/ Issuing Permits/Clearance/ Legal Basis	Commodity Description/Commodity Group/ Tariff Heading (TH)
<p>R.A. No. 9295 (Domestic Shipping Development Act of 2004) dated 3 May 2004</p> <p>MC No. 169 dated 13 December 2001</p>	<p>Ship's Equipment/Spare Parts</p> <p>Spare Parts of Foreign Flagships undergoing emergency repair</p>
<p>Philippine Nuclear Research Institute (PNRI)</p> <p>Republic Act No. 5207 (An Act Providing for the Licensing and Regulation of Atomic Energy Facilities and Materials, Establishing the Rules on Liability for Nuclear Damage, and for Other Purposes) dated 15 June 1968, as amended by Presidential Decree No. 1484 dated 11 June 1978</p>	<p>Atomic energy materials / TH 2844</p>
<p>Bangko Sentral ng Pilipinas (BSP)</p>	<p>Legal tender Philippine currency in excess of PHP10,000</p> <p>Bank Notes, Coin of precious metal other than gold and of non-precious metal not being legal tender, Coin blank essentially of gold, Coin blank essentially of steel, Coin blank essentially of copper, Coin blank essentially of nickel, Coin blank essentially of zinc, Coin blank essentially of tin, and Coin blank essentially of aluminum /</p> <p>TH 4907, 7118, 7108, 7326, 7419, 7508, 7907, 8007, 7616</p>