How should we move forward in customs brokerage and trade facilitation?

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The economic integration in the Association of Southeast Asian Nations (ASEAN) region, with major targets for an ASEAN Economic Community and planned post-2015 targets, is gaining pace. To maximize the potential benefits from such integration, the Philippines must have seamless, efficient, and transparent trading procedures. There are now efforts to modernize customs administration and these will partly affect the customs brokerage profession in the country. The proposed Customs and Tariff Modernization Act is now facing resistance from organized customs brokers as the proposed law entails some changes that could adversely affect their role in customs administration.

This Policy Note examines the rarely explored customs brokerage activity in the Philippines and its role in facilitating trade given the ongoing push to modernize customs administration. It gives a brief analysis of how the customs brokerage profession is being regulated and synthesizes insights on opposing views on the importance of customs brokers in trade facilitation. The analysis is important and timely given the purported threat to the profession of the current effort to modernize customs administration in the country.

Overview of customs brokerage in the Philippines

Customs brokerage services in the Philippines consist of consultation; preparation of customs-required documents for imports and

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exports; declaration of customs duties and taxes; preparation, signing, filing, lodging, and processing of import and export entries; representing importers before any government agency and private entities in cases related to valuation and classification of imported articles; and rendering of other professional services in matters relating to customs and tariff laws, its procedures and practices (Republic Act [RA] 9280 or “Customs Brokers Act of 2004”, Section 6).

The rendering of customs brokerage services is regulated through licensing by the Professional Regulatory Board for Customs Brokers (PRBCB) which is under the Professional Regulation Commission. To be licensed as a customs broker, applicants must pass a written examination that tests their knowledge on: (a) customs laws and implementing rules and regulations; (b) tariff laws and international trade agreements; (c) practical computation of customs duties, taxes, and other charges; (d) documentation, professional ethics, customs procedures and practices; and (e) warehousing and cargo handling operations (RA 9280, Section 15).

Licensed brokers are expected to have knowledge and understanding of various laws and regulations governing tariffs and customs (e.g., RA 1937 or “Tariff and Customs Code of the Philippines”). The PRBCB estimates that there are around 2,000 practicing customs brokers in the Philippines.

Issues being raised by customs brokers
Dialogues with different stakeholders were held to gather views on the actual practice of customs brokerage in the Philippines. Officials from the Bureau of Customs (BOC) and the PRBCB and representatives of the Chamber of Customs Brokers, Inc., and Professional Customs Brokers Association of the Philippines (PCBAPI) were brought together for a roundtable discussion. Interviews with direct users of customs brokerage services were also conducted.1

Customs brokers claimed that the recurring issues in the customs brokerage activity are related to redundancies and inconsistencies in customs policies and procedures. One redundancy is in the accreditation of customs brokers. Per Section 6 of RA 9280, any licensed customs broker is readily authorized to transact with any government agency. However, in practice, the BOC, through Customs Administrative Order (CAO) 3-2006, requires licensed customs brokers to be accredited by the BOC before they could transact with any of its personnel. To be accredited, customs brokers are required by the BOC to submit specific documents and pay a processing fee amounting to PHP 1,300 per broker. Moreover, they are required to renew their accreditation annually; renewal beyond

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1 Five representatives of organizations of customs brokers, one official of the PBRCB, and three officials from the BOC participated in the roundtable discussion. Direct users of customs brokerage services were not able to join the roundtable discussion; thus, the research team conducted separate interviews with three direct users who expressed willingness to air their views.
the April 16 deadline imposes on them a delinquency payment of PHP 3,000. In 2006, the PCBAPI petitioned for the withdrawal of CAO 3-2006 and all its amendments. In July 2013, the Manila Regional Trial Court granted the petition filed by the PCBAPI.

Customs brokers also raised the redundancy of the identification card policy in ports. They described the practice this way: The BOC issues a customs broker a Port User’s Pass (PUP) to allow him or her to transact in the premises and customs areas of a port. A PUP is valid, however, only in the port where it has been issued. Should a customs broker need to access four ports for a transaction, he/she needs to secure four PUPs.

Another issue raised by the customs brokers is the discretion of the BOC Commissioner to create ad hoc offices and the seeming ambiguity of their functions. An example is the creation of the Revenue Enhancements for the Attainment of Collection Targets (REACT). While recognizing REACT’s intention to help the BOC improve its revenue collections as laudable, customs brokers complained that it has delayed trade transactions because it subjects to examination the taxes and duties that have already been examined by the regular BOC appraisers.

The redundancy in the accreditation and renewal processes of importers was also raised. According to the brokers, the repeated submission of the same set of documentary requirements to different units in the BOC and the resubmission of documents that were previously submitted during the application for accreditation impose significant economic costs to importers and slow down the process of importation. The BOC representatives explained that to address these inefficiencies, the BOC has committed to draft a Codified Harmonized Rules and Regulations that will harmonize all relevant rules and screen out regulations that are deemed redundant and inapplicable in the present context.

Lastly, the brokers raised their opposition to Senate Bill 168 or the proposed Customs and Tariff Modernization Act, which is discussed more fully in the next section. The proposed bill aims to promote and secure international trade, protect and enhance government revenue, prevent smuggling and other fraud against customs, and modernize customs and tariff administration. The proposed bill is not just about customs brokerage services. It has certain provisions that, from the perspective of the brokers, are detrimental to the customs brokerage profession.

*The proposed bill on customs modernization and tariff and its implications to customs brokers*

In 2010, the Philippine government ratified the Revised Kyoto Convention (RKC) or the International Convention on the Simplification and Harmonization of Customs Procedures. The participation of the Philippines in the RKC has led to the crafting of several legislative proposals. One of these is House Bill 4788 or the proposed “Customs Modernization and
Tariff Act of 2011”, which was filed in the 15th Congress. The Philippines set a self-imposed deadline of June 2013 to enact the house bill into law. Due to opposing views among stakeholders, the enactment of this bill into law was stalled. Senate Bill 168 or the proposed “Customs and Tariff Modernization Act of 2013” was then filed in the 16th Congress. Customs brokers consider some provisions in the bill as detrimental to their profession (Table 1).

For the customs brokers, the first provision discussed in Table 1 signifies that the government fails to recognize the vital role that customs brokers play in and their significant contributions to effective, efficient, and secure international trade. More importantly, they fear that their role in the envisioned modern customs modernization in the country will be significantly diminished, if not permanently eliminated.

In the current institutional setup, cargoes undergo mandatory assessments by licensed customs brokers. Moreover, only customs brokers can sign the import and export entry declarations. However, as implied in the definition of declarant in Section 108 in the proposed bill, anyone—including importers and exporters—can now declare their goods or can designate a person to declare the cargo on their behalf. The brokers argue that this will not only endanger their jobs but will also jeopardize the processes, integrity of transactions, and the revenue collections targets of the BOC.

Another provision that the customs brokers are wary of is the reference to and definition of “third parties” in Section 1330 of the bill. Any of those enumerated in the bill as third parties is entitled to release the shipment as long as they are entrusted with the job and are authorized by the importer. This provision, according to the brokers, is an infringement of their rights as a “learned profession” that should be protected by an existing law, i.e., RA 9280 (the Customs Brokers Act of 2004).

The BOC strongly believes that the country, as signatory to the RKC, should have customs procedures that comply with best practices and standards in the global markets. Many importers support this bill because they see that the cost of the customs brokers’ services can be an avoidable operational cost.

Differing views on customs brokers' role in trade facilitation

The customs brokers stress that they have a vital role in facilitating efficient, effective, and secure international trade. They consider themselves as safeguarding the interest of the government because they ensure the collection of the right amount of duties and taxes. Furthermore, they argue that although the Philippines is a signatory to the RKC, the convention still allows signatories to adhere to national legislations.

Meanwhile, direct users of brokerage services expressed views that were different from those held by customs brokers. According to the importer and exporter respondents, their
Table 1. Provisions in Senate Bill 168 that customs brokers deem detrimental to them

<table>
<thead>
<tr>
<th>Provision</th>
<th>As Stated in the Senate Bill</th>
<th>Suggested Revisions by Customs Brokers</th>
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<tbody>
<tr>
<td>Section 102. Definition of Terms.</td>
<td>Customs and Tariff Laws xxx</td>
<td>Customs and Tariff Laws xxx</td>
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<td></td>
<td>Customs office xxx</td>
<td>Customs Broker - is a professional defined under Section 4 (a) of Republic Act 9280, as amended</td>
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<td>Section 108. Declarant.</td>
<td>Declarant – A declarant is a person who makes and submits to Customs goods declaration or in whose name such declaration is made. Any person who possesses the right to dispose of the goods shall be entitled to directly act as declarant. However, when he authorizes an agent to make the declaration in his behalf, he can only do so through an accredited customs broker except in case when the declarant is a juridical person in which case it may authorize its employee or officer to make the declaration in behalf of the juridical person.</td>
<td>Declarant – A Declarant is a person who makes and submits to Customs, goods declaration or in whose name such declaration is made. Any person having the right to dispose of the goods shall be entitled to act as declarant. PROVIDED THAT, IF THE DECLARANT IS A JURIDICAL PERSON HE SHALL AUTHORIZE A LICENSED CUSTOMS BROKER TO ACT IN HIS BEHALF. PROVIDED FURTHER THAT, IF THE DECLARANT IS A NATURAL PERSON AND HE OPTED TO USE AN AGENT HE SHALL AUTHORIZE A LICENSED CUSTOMS BROKER TO ACT AS SUCH.</td>
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<td>Section 1330. Supervision and Regulation of Third Parties.</td>
<td>Supervision and Regulation of Third Parties. – Third parties transacting with Customs in behalf of importers and consignees shall be treated equally as if they are themselves the importers or consignees. Third parties transacting with Customs shall be liable for acts committed in violation of this Act and related laws. Upon the recommendation of the Commissioner of Customs, the Secretary of Finance shall issue rules and regulations for the Bureau of Customs to supervise and regulate all third parties dealing directly with the Bureau for and in behalf of another person in relation to the importation, exportation, movement, storage and clearance of goods. Third parties as provided in this section may refer to, among others, logistics providers, importers, exporters, customs brokers, carriers, airlines, shipping lines, shipping agents, forwarders, consolidators, port and terminal operators and warehouse operators. The rules and regulations shall provide for specific conditions when third parties may or may not directly transact with Customs and shall provide a written notice in case such third parties are, for valid reasons, barred from transacting with customs.</td>
<td>Supervision and Regulation of Third Parties. – Third parties transacting with Customs in behalf of importers and consignees shall be treated equally as if they are themselves the importers or consignees. Third parties transacting with Customs shall be liable for acts committed in violation of this Act and related laws. Upon the recommendation of the Commissioner of Customs, the Secretary of Finance shall issue rules and regulations for the Bureau to supervise and regulate all third parties dealing directly with the Bureau for and in behalf of another person in relation to the importation, exportation, movement, storage and clearance of goods. Third parties as provided in this section may refer to, among others, logistics providers, importers, exporters, customs brokers, carriers, airlines, shipping lines, shipping agents, forwarders, consolidators, port and terminal operators and warehouse operator. The rules and regulations shall provide for specific conditions when third parties may or may not directly transact with Customs and shall provide a written notice in case such third parties are, for valid reasons, barred from transacting with customs. PROVIDED, THAT, THE PERSONS ENUMERATED HEREUNDER AS THIRD PARTIES MUST HIRE AN ACCREDITED CUSTOMS BROKER PRIOR TO ENGAGING IN CLEARANCE OF GOODS EXCEPT WHEN SUCH THIRD PARTY IS ALREADY AN ACCREDITED CUSTOMS BROKER.</td>
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</table>
relationship with any customs broker depends on their needs. Large exporting/importing firms usually hire freight forwarders, which act as one-stop shop to complete the trading process. The forwarders, in turn, seek a broker to sign the necessary documents (e.g., customs declaration/entry form) to be submitted to the BOC. According to them, it is only after all the documents have been prepared that a licensed customs broker comes into the picture as his/her signature is required to complete the process.

A respondent from a large import-export firm stated that the mandatory use of customs brokers can be minimized or totally removed without affecting the flow of trade. The said respondent explained that given that the customs broker’s role is merely to formalize the transaction by affixing his/her signature on the documents (as required by the Customs Brokers Act of 2004), customs brokerage can be integrated into the services of the freight forwarders. Another forwarder-firm echoed the same sentiments. Overall, this implies that the bulk of trade facilitation services are actually performed by freight forwarders that are in charge of efficiently transporting goods.

Furthermore, a respondent argued that the claim that customs brokers are the experts on the computation of taxes and duties is contentious. In preparing import or export documents, forwarders employ expert staff who can compute the right amount of duties and taxes due to the government prior to seeking the customs broker’s signature. The respondent also noted that it is still the customs examiner who has the final say on whether the proper duties and taxes have been computed and imposed on a cargo or not.

On the brokers’ assistance in the accreditation of importers, the respondents claimed that such service can be rendered by a freight-forwarding firm as well. Nevertheless, the respondents confirmed that redundancies in the accreditation process exist as earlier pointed out by brokers. They recognize that accreditation is important as it serves as a risk management tool and as a means to weed out bogus importers and smugglers. Inefficiencies such as redundancy in the accreditation process will not only lead to a costly and slower trade process but will also create an incentive for smuggling.

The respondents pointed out that minimizing the role of customs brokers can be beneficial to both exporters and importers because this could result in minimizing costs arising from brokerage fees. According to them, the fees charged by brokers depend on the value of the goods and this can sometimes be very high. Table 2 provides the list of fees for services rendered to clear shipments covered by formal/warehousing entries and transshipment, as prescribed by CAO 1-2001. Meanwhile, the rate of services rendered to clear shipment covered by informal entries range from PHP 469.22 to PHP 700.00.
Interviews revealed that the said schedule of fees is not strictly followed in practice. Because there is no ceiling on what the customs broker can charge, following the value-based schedule could mean very huge fees and some traders are unwilling to pay huge fees for one signature per entry. In cases like these, the brokerage fee usually depends on the negotiation between the customs broker and the firm (or the firm’s forwarder). When it comes to fees, levels that are deemed commensurate to the value-added services rendered, rather than the value of the good, are more palatable to the traders. If a service has no large value added, paying huge fees for it is deemed unreasonable.

**Comments and insights**

The stakeholder engagement process conducted in this study proves that such methodology can be an effective way to extract information, opinions, and issues that would not have surfaced from desk reviews. In the roundtable discussion, the customs brokers had been way more vocal than the government officials in expressing their sentiments. The exchange of opposing views during the roundtable discussion led to the urgency to conduct bilateral conversations with the direct users of the customs brokerage services. Overall, the discussions showed that while customs brokers see themselves as an essential part of trade facilitation, the direct users of their services think differently. They do not see any value added from the customs brokers’ services.

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<tr>
<th>Dutiable Value of Shipment (in PHP)</th>
<th>Fees (in PHP)</th>
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<tbody>
<tr>
<td>Up to 10,000</td>
<td>1,300</td>
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<tr>
<td>Over 10,000 and up to 20,000</td>
<td>2,000</td>
</tr>
<tr>
<td>Over 20,000 and up to 30,000</td>
<td>2,700</td>
</tr>
<tr>
<td>Over 30,000 and up to 40,000</td>
<td>3,300</td>
</tr>
<tr>
<td>Over 40,000 and up to 50,000</td>
<td>3,600</td>
</tr>
<tr>
<td>Over 50,000 and up to 60,000</td>
<td>4,000</td>
</tr>
<tr>
<td>Over 60,000 and up to 100,000</td>
<td>4,700</td>
</tr>
<tr>
<td>Over 100,000 and up to 200,000</td>
<td>5,300</td>
</tr>
</tbody>
</table>

Note: Over PHP 200,000: PHP 5,300 on the first PHP 200,000 plus one-eighth of one percent in excess thereof.

While the views are not representative of the entire population of exporters and importers in the Philippines, the views expressed by these respondents provide important and direct information that has been useful for the purposes of this study. The study clearly points to the declining relevance of the customs brokers’ services in an environment where: (i) customs administration is modernizing; (ii) computerization is replacing the traditional and direct interaction of brokers with BOC staff; and (iii) a more transparent customs administration is emerging to efficiently process a significantly growing volume of trade transactions. It will be more efficient and consistent with trade facilitation to allow traders to use various and modern options for releasing or shipping their goods.

As earlier stated,, the proposed Customs and Tariff Modernization Act is filed as Senate Bill 168 in the 16th Congress (current
Congress). Legislative proposals on customs modernization have been pending for 21 years now (Public Relations and Information Bureau 2013). This time, customs brokers take the Customs Brokers Act of 2004 as their shield or defense against any attempt to dilute or minimize their role in the customs administration process. The legalistic stand of the brokers somewhat collides with the policymakers’ attempt to modernize customs administration.

The legislative proposal that the brokers vehemently oppose is intended to introduce greater efficiencies in customs and trade. A more positive outlook on modernization should trigger among customs brokers a paradigm shift, namely, that a modernized customs administration and trade facilitation process will necessarily create new opportunities for those adept and flexible enough to adjust to changing market conditions. As an upside of modernization, more efficient trade facilitation will create a higher volume of trade and, therefore, new demand for the type of expertise in rules and regulations that customs brokers claim they have.

Meanwhile, the proponents of customs modernization must also recognize that it is necessary to ensure that the proposed bill is not inconsistent with existing laws (e.g., the Customs Broker Act of 2004). Typically, new legislation provides for a repealing clause that is supposed to eliminate any possible inconsistency with existing laws.

Finally, the BOC should prioritize the modernization of customs administration in the country. The BOC and oversight agencies must recognize that the primary indicator used to gauge the BOC’s performance is its revenue collection effort and not the revenue collection targets per se. They also need to consider that the role of the BOC is evolving under a globalized and liberalized trading environment especially in view of the ASEAN Economic Community where tariff walls will become a thing of the past. A more relevant indicator of performance will thus be the timely and efficient facilitation of the volume of trade.

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