MBC CongressWatch Report
Towards Greater Voter Involvement

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Fighting the smuggling scourge

In the 2013-2014 Global Competitiveness Report (GCR) of the World Economic Forum, the Philippines ranked 59th overall out of 148 covered economies—a significant improvement from rank 85 out of 139 in 2010-2011. However, a closer look at the figures reveals that our competitiveness numbers might have been better had they not been dragged down by certain indicators, particularly those related to customs and trade facilitation.

	2010-2011 GCR (139 economies)	2011-2012 GCR (142 economies)	2012-2013 GCR (144 economies)	2013-2014 GCR (148 economies)
PHL overall rank	**85**	**75**	**65**	**59**
Customs and trade facilitation indicators				
Imports and exports	134	131	119	111
Tax collection	133	125	118	121
Prevalence of trade barriers	89	89	76	60
Burden of customs procedures	129	128	126	130

Source: World Economic Forum

In his last State of the Nation Address (SONA), President Benigno Aquino III greatly criticized the Bureau of Customs (BOC) for not only being unable to collect the correct amount of taxes and seize contraband entering the country, but also for allegedly tolerating the proliferation of illicit trade, which includes the entry of illegal drugs and armaments into the Philippines. The Department of Finance (DOF), the BOC's mother agency, estimates that the government is losing over P200 billion in revenue leakages every year due to smuggling, thus denting government's efforts on accelerating economic growth.

Such a concern is shared by the business community when the smuggling scourge was included by 17 business organizations in a joint letter to the President. Comprising the Philippine Business Groups (PBG), which also includes the Joint Foreign Chambers, the business organizations raised the issue of smuggling as a priority area of concern as it continues to derail efforts to raise funds to finance the government's social programs and infrastructure investments.

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Cleansing the BOC

In response to the President's SONA, then Customs Commissioner Ruffy Biazon offered his resignation, which was not accepted by the President. Other deputy commissioners followed suit and tendered their resignations as well. Then Commissioner Biazon, afterwards, issued a directive ordering port officials to relinquish their posts to give way to the reshuffling in the agency.

Finance Secretary Cesar Purisima, for his part, also ordered all BOC personnel to return to their permanent plantilla positions and original units[1] after the SONA.

At present, the BOC has six newly appointed deputy commissioners as indicated in the table below:

Deputy Commissioner	Assigned Post	Previous designation
1. Ret. Gen. Jessie Dellosa	Intelligence Group	AFP Chief of Staff
2. Agaton Uvero	Assessment & Operations Coordinating Group	International trade and customs expert (private sector)
3. Edita Tan	Revenue Collection Monitoring Group	DOF-IFG Assistant Secretary
4. Myrna Chua	Internal Administration Group	DBM Senior Officer
5. Primo Aguas	Management Information Systems & Technology Group	IT expert (private sector)
6. Ariel Nepomuceno	Enforcement Group	OCD Director

On November 29, Biazon was included as one of the respondents in the case filed by the National Bureau of Investigation with the Department of Justice for his alleged involvement in the Priority Development Assistance Fund Scam. Three days later, Biazon tendered his irrevocable resignation from the agency. Taking over the BOC as its officer-in-charge is Finance Undersecretary John Sevilla, who previously headed DOF's Corporate Affairs Group and Privatization.

Besides the transfers and appointment of personnel, the President has reorganized the DOF through the issuance of Executive Orders 139 and 140 (both issued last September 2), in order to improve the tax effort of the country's revenue generating agencies.

Executive Order 139 creates an Office of the Revenue Agency Modernization (ORAM) under the DOF with the primary functions of reviewing and evaluating the implementation of current administrative systems. Its other functions include formulating and implementing modern and enhanced systems, procedures, and organizational structures in the DOF, including all its attached and related agencies.

Executive Order 140, meanwhile, establishes the Customs Policy Research Office (CPRO), also under the DOF, which is primarily tasked to work on policies that would simplify customs procedures while ensuring harmonization with internally-accepted customs administration practices and processes.

By virtue of EO 140, 27 customs collectors were transferred to the newly created CPRO.[2] Thirteen of the 27 employees sought relief from the Manila Regional Trial Court (RTC) and were granted a temporary restraining order on the transfer, which stretched until October 20. The court has since denied the petitions assailing the transfer order, and consequently allowed the reshuffling to take place.

[1] *Customs Personnel Order (CPO) No. B-134-2013*
[2] *CPO No. B-189-2013*

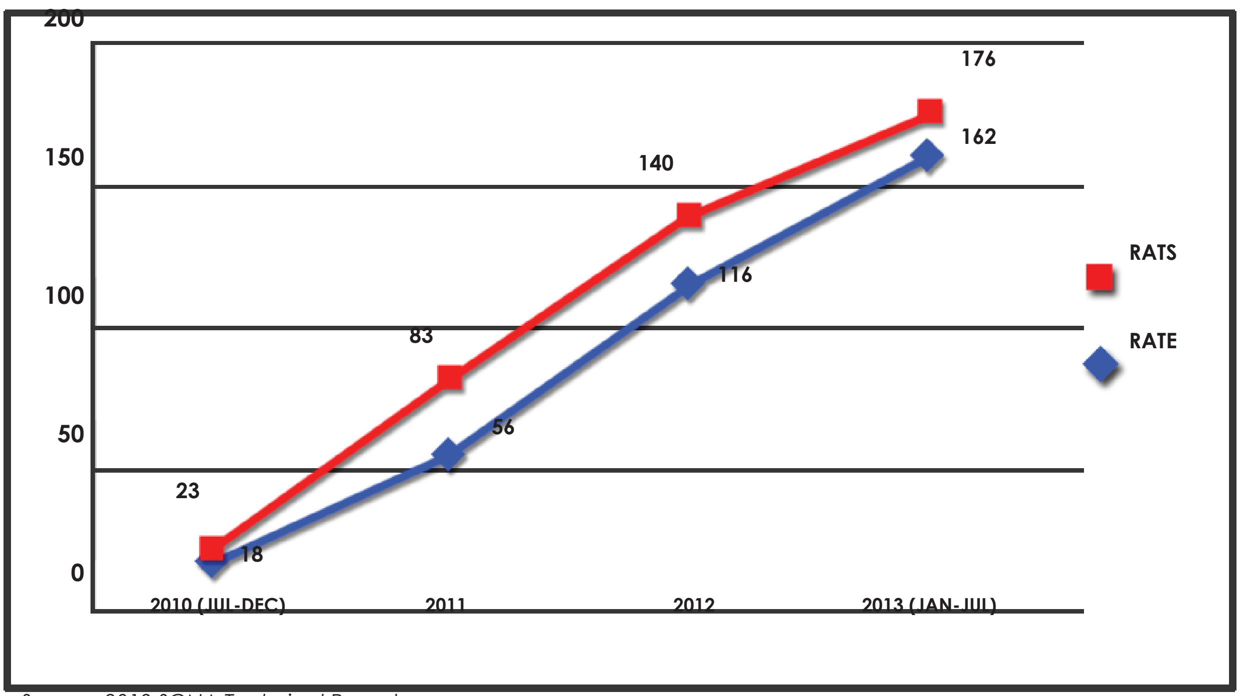
Running after smugglers

The Run After The Smugglers (RATS) program being implemented by the BOC has, so far, filed 155 cases against suspected smugglers. Of the 155 cases, 112 are pending with the DOJ, 28 are pending with the courts, and 15 cases have been dismissed. 107 of the 155 cases were filed under then Commissioner Biazon's watch.[3] However, the BOC has only had three convictions to date since the program was launched in 2005.

The first conviction came in 12 July 2012 when the Manila RTC found Vill Gay Forwarding Services owner Danilo R. Villar and his customs broker, Danilo L. Opiniano, guilty for violations of the Tariff and Customs Code. Both were sentenced with imprisonment for a period of eight to nine years.
On 12 December 2012, the agency, likewise, successfully secured the conviction of Roel Paquit Sayson, a trader who misdeclared his vehicle shipments as replacement parts.[4] For evading payment of about P1.8 million in duties and taxes from the importation of nine vehicles, Sayson was meted a penalty of 8 to 12 years of imprisonment, plus a fine of P8,000.

As a complement to the RATS program, the Bureau of Internal Revenue's (BIR) Run After Tax Evaders RATE campaign has also been intensified under President Aquino's watch. The two agencies were tasked to alternately file cases with the Department of Justice (DOJ) every week.

RATS and RATE cases filed during the Aquino Administration



Source: 2013 SONA Technical Report

According to the BIR, the tax liabilities of the 176 respondents in the RATE program is estimated at P43 billion. However, only four convictions have been gotten so far.

[3]*BOC data (as of 28 November), does not yet reflect cases resulting to convictions*
[4]*http://customs.gov.ph/news/2012/12/18/customs-rats-secures-first-cta-conviction/*

While the RATS program has yet to convict the supposed "big fish," there were considerable gains with regard to confiscation of smuggled goods. BOC data shows that over P2.4 billion in smuggled goods were seized during the first eight months of the year.[5] This includes P1.2 billion worth of illegally imported rice from Vietnam seized at the port of Cebu, preventing a potential revenue loss of P600 million in duties and taxes. The BOC had also previously seized three 40-foot container vans filled with smuggled mobile phones and other electronic gadgets, health products, and high-end bags and clothes at the Manila International Container Port with estimated value of P500 million.

Revenue targets and collections

Last September, Secretary Cesar Purisima formalized the cluster system in the DOF, with each cluster having a designated head who will act as the primary coordinator for all operations and policy engagements.[6] BIR Commissioner Kim Henares heads the Revenue Cluster, which includes the BIR and BOC. Also under the Revenue Cluster are agencies that support government revenue collection: the Bureau of Local Government Finance and the National Tax Research Center.

The target revenue collection for the BOC this year stands at P340 billion. From January to October 2013, the BOC reported collections of P252.49 billion, 4.9% higher compared to the same period last year, but 10% off the target set by the Development Budget Coordination Committee (DBCC). In October alone, the agency generated P27.86 billion, 3.4% higher than in October 2012, but 8.7% lower than target. These notwithstanding, collections grew for the fourth month in a row. Meanwhile, the DBCC has set a collection target of P59.06 billion for the BOC for the remainder of the year.[7]

Other administrative measures

In an effort to intensify revenue generation and curb smuggling, the DOF issued DO 17-2013 last April 2013 identifying specific measures that the Bureau of Customs should implement immediately. The said measures include the following:

- Only particular ports will be accredited to accept commodities such as oil, steel, grains, tiles, gold, and vehicles.

- Importers will be required to submit their annual rolling import plan, indicating quantity, type, source, and location of the intended port of arrival. The Commissioner shall then pre-authorize importation of sensitive goods in accordance with the import plan.

- Accredited ports will be required to submit monthly trade statistical reports and a list of all importations including details such as date of arrival, port of origin, capacity of the vessel or aircraft, type of commodities, and details of the consignee. The submission will be checked for discrepancies against the data from the Philippine Ports Authority and the other relevant agencies, on a per-volume and per-vessel basis.

The DOF has also directed the execution of other measures such as: strict implementation of the requirement for importers to pay value-added and excise tax on all oil imports upon arrival to the Philippines;[8] submission of the Income Tax Return as received by the BIR as one of the requirements for accreditation of importers; and the conduct of post-audit examinations on importation of sensitive commodities.

[5]http://newsinfo.inquirer.net/483649/boc-totes-up-p2-4b-in-seized-goods
[6]Department Order 39 s. 2013
[7]http://www.rappler.com/business/214-who-s-who/38202-henares-to-head-new-revenue-cluster
[8]Revenue Regulation No. 2-2012

Legislative measures

Several bills on anti-smuggling and customs modernization have been filed and are now pending in the respective committees in the House of Representatives and the Senate. Worth noting is that, during the 15th Congress, the House passed the Customs and Tariff Modernization Act on third reading.

CUSTOMS MODERNIZATION AND ANTI-SMUGGLING BILLS IN CONGRESS:

Customs Modernization and Tariff Act (CMTA)

HB 5 (Rep. R. Biazon)
HB 10 (Rep. R. Umali)
HB 3339 (Rep. R. Abu)
SB 168 (Sen. S. Osmeña III)

Anti-Smuggling

HB 166 (Rep. E. Singson)
HB 1348 (Rep. R. Rodriguez)
HB 1461 (Rep. X. Romualdo)
HB 1583 (Rep. E. Escudero)
HB 3107 (Rep. A. Yap)
SB 442 (Sen. F. Escudero)
SB 456 (Sen. R. Recto)
SB 741 (Sen. J. Estrada)
SB 882 (Sen. J. Estrada)

The filed measures seek to amend the existing Tariff and Customs Code enacted in 1957 and codified in 1978. The law has since been amended on a piecemeal basis through subsequent laws and executive issuances. The government and other stakeholders, especially the private sector, however, agree that the law needs to be fully updated to be more responsive to global trade developments.

The various versions of the anti-smuggling bills provide for the following:

- The creation of an Internal Control Office to be attached to the Office of the Commissioner of Customs. The said office shall conduct an annual bureau-wide audit which shall contain the identified problems and deficiencies, as well as recommended policies and corrective measures. These shall be acted upon by the Commissioner, who shall furnish the Secretary of Finance a copy of the report together with the actions taken.

- Requiring a true and complete copy of the cargo manifest and bill of lading, together with the stowage plan of the vessel, to be electronically sent in advance to the Bureau of Customs and the Philippine Ports Authority.

- Publishing of the list of accredited importers and brokers within 90 days from approval of application for accreditation or its renewal.

- Requiring a valuation library to serve as reference in the valuation and appraisal of imported articles.

- Classifying of customs bonded warehouses (CBW) and requiring its accreditation.

- Setting of the paid-up capital and net assets of bonded warehouse entities to the value of goods of unliquidated entries stored in their warehouses. This includes those operating under the Philippine Economic Zone Authority (PEZA), the Subic Bay Metropolitan Authority (SBMA), and other freeports and ecozones

- Mandating that surety companies can no longer issue bonds in favor of the BOC and be subjected to cancellation of its permits or license. Such entities are given 30% of the total due and demandable bonds as their minimum liability with which it can operate.

[5] *http://newsinfo.inquirer.net/483649/boc-totes-up-p2-4b-in-seized-goods*
[6] *Department Order 39 s. 2013*
[7] *http://www.rappler.com/business/214-who-s-who/38202-henares-to-head-new-revenue-cluster*
[8] *Revenue Regulation No. 2-2012*

- Listing down modes of disposition of seized goods.

- Strengthens public-private partnership through the establishment of the Ports Transparency Alliance (PORTAL), whose membership includes representatives of domestic industries, industry associations or chambers, taxpayer associations and consumer groups for the side of the private sector.

- Substantially increases the fines and penalties for smuggling.[9]

On the other hand, the proposed Customs Modernization and Tariff Act essentially repeals the current Tariff and Customs Code and seeks to comply with the provisions of the Revised Kyoto Convention (RKC)[10] by aligning customs procedures to internationally accepted standards.

The Philippines acceded into the RKC, also known as the International Convention on the Simplification and Harmonization of Customs Procedures, on 25 June 2010. As a contracting party, the country is mandated to comply with and implement the provisions of the General Annex within a specific period—36 months for Standards and 60 months for Transitional Standards—with one-year extension only in exceptional cases. The General Annex provides for accession to the following principles:

1. transparency and predictability of Customs actions
2. standardization and simplification of the goods declaration and supporting documents
3. simplified procedures for authorized persons
4. maximum use of information technology
5. minimum necessary Customs control to ensure compliance with regulations
6. use of risk management and audit-based controls
7. coordinated interventions with other border agencies
8. partnership with the trade

Moving forward

With the effects of reshuffling and the reorganization in the Bureau of Customs yet to be fully realized, it would be beneficial to assess how the country's customs procedures, policies and laws are compliant with its commitments, particularly with the RKC. A project entitled "Research and Advocacy Support for Trade Facilitation: Philippine Compliance with the Revised Kyoto Convention (RKC)"[11] showed that the national legislation was compliant to 55% of the RKC provisions. It further opined that only 16% of the provisions contained therein required amendment of the law. However, the project was conducted in 2006, and requires further validating and updating.

Such an exercise will be helpful in the consideration of the anti-smuggling and customs modernization bills pending in Congress. A possible course of action to take is to reconcile the two measures into a single one, thereby addressing multiple areas of concern with a single stroke.

Aside from RKC, the ASEAN Integration in 2015 brings both challenges and opportunities for the country's trade competitiveness. The BOC has an ongoing computerization program through the Integrated Philippine Computer System (IPCS), which is expected to introduce additional security measures and, thus, enhance revenue collection.

[9] *Example: Sec. 48, par. 6 of HB 166. If the value of smuggled articles exceed P50 million, the act shall be deemed a heinous crime and shall be punished with reclusion perpetua and a penalty of not less than P12 million but not more than 50 million. Other bills set a lower threshold – P5 million (HB1461) and P1 million (HB 1583), for the imposition of penalty of reclusion perpetua.*

[10] *except Section 104, on rates of import duty and Section 514, on export products subject to duty and rates*

[11] *Parayno Consultancy Services. 2007. Philippine Compliance with the Revised Kyoto Convention. http://pdf.usaid.gov/pdf_docs/Pnadi616.pdf*

The National Single Window (NSW) Project, meanwhile, will electronically link all government agencies involved in the processing of import and export transactions, and eventually connect these with the ASEAN Single Window.

While these programs have yet to be fully operational, a low-hanging fruit that government can capitalize on is the updating of pertinent customs and trade data that may be shared among pertinent government agencies and stakeholders. Pending the full implementation of the IPCS and NSW, the availability of timely and accurate information, in the interim, may assist in identifying gaps in the anti-smuggling effort and result in improved trade facilitation and competitiveness.

The **CongressWatch Report** is a regular publication of the Makati Business Club. Its main mission is to promote accountability and transparency of elected government officials. For inquiries, suggestions, and additional information, please call CongressWatch at telephone nos. 751-1143 to 45 or email patrick.chua@mbc.com.ph.

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