STSR TAXBITS

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GLOBALIZATION AND PROTECTIONISM

by

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The Tariff and Customs Code of the Philippines was enacted in 1957 and ever since had minimal amendments. During its enactment, the thrust of the TCCP is towards the protection of domestic industries in order to strengthen both the manufacturing and the agricultural sector of the country.

Six (6) decades passed, however, the intrinsic aim of the TCCP remains basically unchanged until the concept of globalization forced the country to abandon the long practiced principle of protectionism.

Tarrification of agricultural products

On March 28, 1996, RA 8178 the Agricultural Tarrification Act was enacted in order to comply with the WTO mandate to remove all quantitative restrictions (QRs). The law defined QRs as *"non-tariff restrictions used to limit the amount of imported commodities, including but not limited to discretionary import licensing and import quotas, whether qualified or absolute".* The removal of the QRs was replaced by *"tarrification",* meaning *"the lifting of all existing quantitative restrictions such as import quotas or prohibitions, imposed on agricultural products, and replacing them these restrictions with tariffs.* The tariffs were in turn decreased through time until such time that the affected product become fully liberalized (no import quota, no tariff imposed).

The tarrified agricultural products under RA 8178 are onions, potatoes, garlic, cabbages, coffee, and ruminants for breeding and slaughter (beef). The tarrification of the affected products expired on June 30, 2012, meaning these products are now *"fully liberalized".*

Rice, being the staple product of the Philippines, is not included in the full liberalization of other agricultural products. It is treated differently by the Philippine government, so when the other agricultural products can now be imported liberally by virtue of RA 8178, our government started its negotiations with the WTO to extend the special treatment of rice from 2012 until 2017.

During the meeting of the WTO Council of Goods on June 19, 2014, the WTO approved the Philippine waiver request for the extension of its special treatment for rice and forwarded the draft decision to the General Council for adoption. Australia, Indonesia, the United States, China, Vietnam and India supported the Philippine request. Thailand said that it had concluded negotiations with the Philippines on June 10, 2014, and although it still has to conclude internal procedure, it has to go along with forwarding the draft decision to the General Council.

Under the draft waiver decision, the Philippines will provide minimum market access for rice imports, and establish country-specific quotas. The General Council will review annually the waiver. At the expiration of the waiver in June 30, 2017, the importation of rice into the Philippines will be subject to ordinary customs duties.[1]

Department of Agriculture Sec. Proceso Alcala said that it is the position of the Department to maintain rice quotas until 2017 while the Philippines is negotiating with countries about our WTO commitments.[2]

Smuggling as an act of economic sabotage

SBN 2348 (authored by Sen. Grace Poe) defines **economic sabotage** as *"any and all activities that undermines, weakens, or render into dispute the economic system or viability of the country or tends to bring such effects…**any violation of Section 3601 and 3602 of this Act, which involves goods and/or articles with the aggregate value of One Million Pesos (P1,000,000.00)…".*** The implication is that any importation amounting to one million pesos and above shall be considered as an act of economic sabotage provided that such act of smuggling *"…undermines, weakens or render into dispute the economic viability of the country…".* Note that the provision covers all imports regardless of whether they are agricultural products or not. Likewise almost all importations having an import value of one million pesos or more, must be inspected by the BOC. As a result, it would clog the import entries of the country, a signal contrary to the WTO mandate of facilitating trade worldwide.

Another bill, HBN 5525 also known as the Customs and Tariff Modernization Act (CTMA) is currently being considered in the Senate. It provides for the following:

"…Section 1401. Unlawful Importation or Exportation, (g)…

> *If the appraised value of the goods unlawfully imported to be determined in the manner prescribed under this Act, including duties and taxes, exceeds Two hundred million pesos (P200,000,000.00) or if the aggregate amount of the appraised values of goods which are the subject of unlawful importation committed in more than one instance, including duties and taxes exceeds Two hundred million pesos (P200,000,000.00), the same shall be deemed as a **heinous crime** and shall be punishable with a penalty of reclusion perpetua and a fine of Fifty million pesos (P50,000,000.00)…"*

From the point of view of the minimum importation amount, the CTMA (HBN 5525) and SBN 2348 (of Sen. Poe) are exact opposites. While the CTMA seems to favour globalization, SBN 2348 has the tendency to protect domestic industries against the onslaught of the entry of cheap imports. To be considered as an act of economic sabotage SBN 2348 requires only one million pesos while in the CTMA (HBN 5525), the minimum amount of importation has to be ₱200 million.

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[1] https:/www.wto.org/english/news-ehnews14_e/good_24jun14_e.htm, July 21, 2014, 10:30 am

[2] Senate hearing on rice smuggling, January 22, 2014.

Agricultural products

Sen. Cynthia Villar filed SBN 2765, the "Anti-agricultural smuggling Act of 2015", containing a provision regarding smuggling as an act of **economic sabotage**, thus:

> *"Sec.5. **Agricultural Smuggling as Act of Economic Sabotage**.- The acts of agricultural smuggling, or technical smuggling thereof, of a minimum aggregate amount of One Million Pesos (P1,000,000.00) worth of agricultural products or has been found guilty of engaging in agricultural smuggling of rice, or technical smuggling thereof, with a minimum aggregate amount of Fifteen Million Pesos (₱15,000,000.00), as valued by the Bureau of Customs, utilizing methods of value verification of value verification such as, but not limited to, Revision Orders and/or by appropriate agencies and entities identified, accredited or certified by the Bureau of Customs, shall be guilty of economic sabotage."*

The bill likewise defines economic sabotage as:

> *"Any act or activity which undermines, weakens or renders into disrepute the economic system or viability of the country to bring out such effects and shall include, among others, price manipulation to the prejudice of the public specially in the sale of basic necessities and prime commodities."*

SBN 2348 (Sen. Poe) and SBN 2765 (Sen. Villar) have one thing in common, and that is the minimum value of imports of one million pesos (₱1M). However, SBN 2765 covers only agricultural products, while SBN 2348 covers both agricultural and non-agricultural products. Furthermore, the minimum amount of ₱1M in SBN 2765 is the "aggregate" amount of import. The word "aggregate" should be defined.

Position of the agricultural sector

During a technical working group meeting (TWG)[3], the merits of agricultural smuggling as an act of sabotage was discussed. Some suggestions (points of view) of the TWG participants are quoted below in order to understand the effort that must be exerted in order to harmonize the CTMA with SBN 2765; to wit:

1. **Atty. Elias Inciong**
   President
   United Broilers Raisers Association (UBRA)

   The efforts of UBRA may be rendered inutile by the eventual passage of the CMTA (HBN 5525). The lower the amount of the threshold, the better.

2. **Mr. Davino Catbagan**
   Assistant secretary
   Department of Agriculture

   Any illegal activity like smuggling is not sanctioned by the WTO. It is recommended that "we" concentrate on the proposed bill (SBN 2765, Sen. Poe), whether or not we anticipate the passage of the CMTA.

3. **Ms. Mercedes G. Yacapin**
   Department Manager
   National Food Authority (NFA)

   The official position of the NFA is that there should not be any threshold, the point in time does rice smuggling constitute, or will fit into the definition of economic sabotage. With the lifting of the QRs in 2017, the NFA will no longer regulate rice and what will guide the industry will be tariff. Nevertheless, smuggling would still happen if the world market prices is low. The millers, wholesalers, traders, farmers, as well as the government would be adversely affected.

4. **Mr. Herculano C. Co, Jr.**
   President
   Philippine Confederation of Grains Association (PHILCONGRAINS)

   There should be no threshold because (in agricultural smuggling) there is already an intent to commit the criminal act, considering the imperfect system that we have. The current tariff on rice is quite high, around 40 to 35%. Our production cost is

[3] A technical working group meeting was held on June 4, 2015 by the Senate Committee on Agriculture and Food jointly with the Committee on Ways and Means and Justice and Human Rights. Aside from the bill of Sen. Villar (SB 2765), a similar bill of Sen. JV Ejercito was also discussed, i.e., SB 2082 *"An Act Declaring Rice Smuggling as an Act of Economic Sabotage Prescribing Penalties Therefor and for Other Purposes).*

much higher than the production cost of other countries, because we have high cost of power, electricity, cost of fertilizers and other inputs. Rice smuggling should also be considered as an act of economic sabotage.

5. **Ms. Minda Manantan**
Executive Director
National Meat Inspection Service (MNIS)

The term "economic sabotage" should be defined in such a way that it will cover all agricultural products. As far as the DA is concerned, there is a need to secure a permission to import because of the WTO mandate of an SPS (Sanitary and Phytosanitary) measures.

6. **Mr. Jess Cham**
President
Meat Importers and Traders Association, Inc. (MITA)

There is a need to harmonize our regulations with the rest of the world, particularly, the ASEAN.

7. **Mr. Ernesto Ordonez**
Chairman
Alyansa Agrikultura

There is a need to harmonize with the ASEAN only if it fits us. A threshold of one million pesos (P1M) for agricultural products is appropriate.

8. **Mr. Althea Acas Parraneo**
Consultant, SINAG

Agricultural products should be segregated from other commodities, considering the following reasons: (a) food safety standards, and (b) economic growth should start with the countryside. Agriculture employs 30% of the entire Philippine workforce involving 11.1 million Filipinos. By the policy of the national government, as stated by the laws passed by Congress and the Senate, as a general principle in the Constitution, there should be a distinction between agriculture and other commodities.

9. **Atty. Halmen Valdez**
Office of Sen. Villar

The prime consideration in the evaluation of the bills under consideration is its impact on the economy, followed by the setting of a threshold.

10. **Atty. Rhaegee Tamana**
Office of Sen. Villar

There should not be a threshold, the mere intent to smuggle and to disrupt economic conditions of selling and buying in the country should be penalized.

11. **Mr. Rosendo So**
President, SINAG

Most of the framers do not have the capacity to defend themselves against smuggling of agricultural products. There is a need to help these farmers.

Observations

There is a need to consolidate all provisions regarding importations/exportations into one coherent code for easy reference. There are two inherent books of the Tariff and Customs Code of the Philippines (TCCP): the Tariff Book (Book II) and Customs Procedures (Book I). The CTMA amends only Book I. As far as Book II is concerned, there are as many tariff books as there are FTAs (Free Trade Areas) because for every FTA the Philippines adheres to, it should be accompanied by a set of tariffs which are included in that particular FTA.

In order to enact the CTMA, all the bills pertaining to customs procedures must be harmonized. The task is daunting to say the least. It is a balancing act among the affected sectors, namely, the international community (the World Trade Organization, the ASEAN, the Revised Kyoto Convention, among others), the domestic industry, and the Philippine government.

The international community wants to facilitate trade by removing tariff barriers and the lowering of tariffs.

As far as the domestic industries are concerned, they clamor for the highest possible tariff rate, and the severest penalties for smuggling in order to protect the country's manufacturing sector. Unfortunately, the demands of the private sector is directly opposite the mandates of the international community.

Let us not forget the government. The concern of the government is revenues from both importations and exportations. Considering that the tariff rates are decreasing, the government's revenue likewise decreases.

Salient Features of Republic Act (RA) No. 10668

An Act Allowing Foreign Vessels to Transport and Co-Load Foreign Cargoes for Domestic Transshipment and for Other Purposes (July 21, 2015)

Background Information.

RA 10668 repealed Section 1009 of the Tariff and Customs Code (TCC) of the Philippines [Presidential Decree {PD} 1464], as amended. Said TCC proviso states:

> *"Sec. 1009. Clearance of Foreign Vessels To and From Coastwise Ports. — Passengers or articles arriving from abroad upon a foreign vessel may be carried by the same vessel through any port of entry to the port of destination in the Philippines; and passengers departing from the Philippines or articles intended for export may be carried in a foreign vessel through a Philippine port.*
>
> *"Upon such reasonable condition as he may impose, the Commissioner may clear foreign vessels for any port and authorize the conveyance therein of either articles or passengers brought from abroad upon such vessels; and he may likewise, upon such conditions as he may impose, allow a foreign vessel to take cargo and passengers at any port and convey the same upon such vessel to a foreign port."*

Related to the above is another provision, viz:

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* Prepared by Clinton S. Martinez and Ms. Elsie T. Jesalva.

"Section 1001. Ports Open to Vessels Engaged in Foreign Trade — Duty of Vessel to Make Entry. — Vessels engaged in the foreign trade shall touch at ports of entry only, except as otherwise specially allowed; and every such vessel arriving within a customs collection district of the Philippines from a foreign port shall make entry at the port of entry for such district and shall be subject to the authority of the Collector of the port while within his jurisdiction.

"The master of any war vessel employed by any foreign government shall not be required to report and enter on arrival in the Philippines, unless engaged in the transportation of articles in the way of trade."

It has been commented that: "*As a general rule, vessels engaged in foreign trade are allowed to touch at ports of entry x x x. The exception is that such vessels may touch at ports that are not ports of entry (outports) for the purpose of loading and unloading cargo and passengers when granted a special permit by the Commissioner of Customs*." [1]

The above provisos of the TCC refers to the so-called "*Cabotage Principle*" which was put in place to shelter or defend local industries from illicit foreign trade transactions.

The term 'cabotage' has been defined as: "*Means coasting trade. A state may, in the absence of treaty to the contrary, reserve for its own vessels its coastwise trade, i.e., carriage between ports along its coast, to the exclusion of foreign vessels. This is fact is a common practice among states*." (Sibal, Jose Agaton R.: Philippine Legal Encyclopedia, p. 102)

Additionally, the same also refers to a "*nautical term in Spanish, denoting strictly navigation from cape to cape along the coast without going out into the open sea. In International Law, cabotage is identified with coasting trade so that it means navigating and trading along the coast between the ports thereof*." (Black's Law Dictionary, 6th Ed., p. 202)

Vital Provisions.

In his sponsorship speech on Senate Bill (SB) No. 2486[2] delivered on 28 January 2015, Senator Bam Aquino IV mentioned that "*this exclusive right incurs an extra cost for our importers of raw materials and for Philippine exporters of goods. Thus, we are pushing today for allowing foreign ships coming from international ports to dock into multiple ports all over the country*."

He put emphasis on the following benefits to our producers and entrepreneurs: (1) *the lowering of production costs*; (2) *the easing of doing business in the maritime transport industry*; (3) *the decongestion of the Manila Port*; and (4) *the further leveraging of our strategic location in the ASEAN market.*

RA 10668 has the ensuing important attributes:

1] **State Policy**. - (a) To assist importers and exporters in enhancing their competitiveness in light of intensifying international trade; and (b) To lower the cost of shipping export cargoes from Philippine ports to international ports and import cargoes from international ports for the benefit of the consumers. (Section 1)

2] **Scope**. - The law applies exclusively to foreign vessels carrying foreign container vans or foreign cargoes (Sec. 3).

3] **Some Vital Terms Defined**. –

(a) *Co-loading* refers to agreements between two (2) or more international or domestic sea carriers whereby a sea carrier bound for a specified destination agrees to load, transport, and unload the container van or cargo of another carrier bound for the same destination;

(b) *Domestic cargo* refers to goods, articles, commodities or merchandise which are intended to be shipped from one (1) Philippine port to another Philippine port, even if, in the carriage of such cargo, there may be an intervening foreign port;

(c) *Export cargo* refers to goods, articles, commodities or merchandise carried in foreign vessels and duly declared before the Bureau of Customs at the port of origin as cargoes for shipment to a port outside the jurisdiction of the Philippines;

(d) *Foreign cargo* refers to import or export cargo carried by a foreign vessel;

(e) *Import cargo* refers to goods, articles, commodities or merchandise of foreign origin carried in a foreign vessel which are intended to be cleared before the Bureau of Customs for delivery to the port of final destination within the jurisdiction of the Philippines;

(f) *Philippine port* refers to any port within the Philippines authorized by a government contract to handle domestic import or export cargo;

[1] Tejam, Montejo A.: *Commentaries on the Rev. TCCP*, 1986, p. 2212.

[2] Under Committee Report No. 91. Submitted jointly by the Committees on Trade, Commerce and Entrepreneurship; Public Services; and Ways and Means with Senators Trillanes IV, Ejercito-Estrada, Poe and Aquino as authors.

(g) *Port Authorities* refer to entities engaged in the development and operation of seaports including, but not limited to, Philippine Ports Authority, Cebu Port Authority, PHIVIDEC Industrial Authority, Cagayan Special Economic Zone Authority, Aurora Special Economic Zone Authority, Bases Conversion and Development Authority, Authority of the Free Port Area of Bataan and Subic Bay Metropolitan Authority; and

(h) *Transshipment* refers to the transfer of cargo from one (1) vessel or conveyance to another vessel for further transit to complete the voyage and carry the cargo to its final destination. (Sec. 2)

4] ***Carriage of a Foreign Cargo by a Foreign Vessel***. – A foreign vessel:

(a) Arriving from a foreign port, shall be allowed to carry a foreign cargo to its Philippine port of final destination, after being cleared at its port of entry;

(b) Arriving from a foreign port, shall be allowed to carry a foreign cargo by another foreign vessel calling at the same port of entry to the Philippine port of final destination of such foreign cargo;

(c) Departing from a Philippine port of origin through another Philippine port to its foreign port of final destination, shall be allowed to carry a foreign cargo intended for export; and

(d) Departing from a Philippine port of origin, shall be allowed to carry a foreign cargo by another foreign vessel through a domestic transshipment port and transferred at such domestic transshipment port to its foreign port of final destination.

For purposes of this Act, an empty foreign container van going to or coming from any Philippine port, or going to or coming from a foreign port, and being transshipped between two (2) Philippine ports shall be allowed. (Sec. 4)

5] ***Authority of the Commissioner of Customs***. – The Commissioner of Customs, upon such reasonable conditions as may be imposed, may do the following acts:

(a) Authorize the conveyance of foreign cargo brought from abroad by a foreign vessel;

(b) Allow a foreign vessel to take cargo intended for export at any Philippine port and convey the same upon such foreign vessel to a foreign port; and

(c) Authorize the transshipment of such foreign cargo intended for import or export through another Philippine port[1] by another foreign vessel to the cargo's port of final destination.

Provided, That such acts shall not diminish or impair any existing and valid government contract covering the handling of import and export cargo: *Provided, further,* That the Commissioner of Customs shall have the authority to impose penalties to foreign ship operators found to have violated any provision of this Act and to take measures to address illegal activities, including smuggling. (Sec. 5)

6] ***Application of the Carriage of Goods by Sea Act***. – Carriage conducted in accordance with this Act shall be governed by Commonwealth Act No. 65, otherwise known as the "Carriage of Goods by Sea Act" with respect to the liability of the carrier for the loss of, or damage to, goods carried. (Sec. 6)

7] ***Carriage by Foreign Vessels Not a Public Service, Foreign Vessels Not Common Carriers***. – Foreign vessels engaging in carriage conducted in accordance with this Act shall not be considered common carriers as provided in Republic Act No. 386, otherwise known as the "Civil Code of the Philippines"; neither shall such foreign vessels be considered as offering a public service and thus shall fall outside the coverage of Republic Act No. 9295, otherwise known as the "Domestic Shipping Development Act of 2004".

8] ***Prohibitions***. – Foreign ship operators shall submit their cargo manifest to the Port Authorities to ensure that no domestic cargoes are carried by the foreign ship. No foreign vessel shall be allowed to carry any domestic cargo or domestic container van, whether loaded or empty, even if such domestic container van may contain foreign cargo. (Sec. 8)

Pursuant to Commonwealth Act (CA) No. 65 or the Carriage of Goods by Sea Act [COGSA] alluded to above, the following activities should be observed by the carrier:

RESPONSIBILITIES AND LIABILITIES

"Section 3. *(1) The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to —*

"(a) Make the ship seaworthy;

"(b) Properly man, equip, and supply the ship;

"(c) Make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception carriage and preservation.

"(2) The carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

"(3) After receiving the goods into his charge the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things —

"(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

"(b) Either the number of packages or pieces, or the quantity or weight, as the case may be, as furnished in writing by the shipper.

"(c) The apparent order and condition of the goods: Provided, That no carrier, master, or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

"(4) Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs (3) (a), (b), and (c) of this section: Provided, That nothing in this Act shall be construed as repealing or limiting the application of any part of the Act, as amended, entitled "An Act relating to bills of lading in interstate and foreign commerce," approved August 29, 1916 (U. S. C. title 49, Secs. 81-124), commonly known as the "Pomerene Bills of Lading Act."

"(5) The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him; and the shipper shall indemnify the carrier against all loss damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage or to any person other than the shipper.

"(6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.

"Said notice of loss or damage maybe endorsed upon the receipt for the goods given by the person taking delivery thereof.

"The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

"In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

"(7) After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier to the shipper shall, if the shipper so demands, be a "shipped" bill of lading Provided, That if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with name or name the names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this section be deemed to constitute a "shipped" bill of lading.

"(8) Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods, arising from negligence, fault, or failure in the duties and obligations provided in this section, or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect. A benefit of insurance in favor of the carrier, or similar clause, shall be deemed to be a clause relieving the carrier from liability."

Senator Aquino IV mentioned in his sponsorship speech that: "*This is our first step in our effort to further unlock the industry, let it grow and thrive, and make it as efficient as possible as we anticipate more trade, more economic activity, and real inclusive growth for the Filipino people*."

RA 10668 was enacted to help coastwise trade and spur economic activity by allowing the unimpeded flow of goods and services. The success of the same depends on the parties implementing it and those affected by its scope. The passage of the said law is very timely considering the proximity of the integration ASEAN into one market.

[1]

"Public sector debt down to P7.5T as of June '14. Commitment to ensure fiscally sustainable future"

"The debt of the national government and local government units combined slid by 1.5 percent to P7.5 trillion as of the middle of 2014, the latest Department of Finance (DOF) data released yesterday showed.

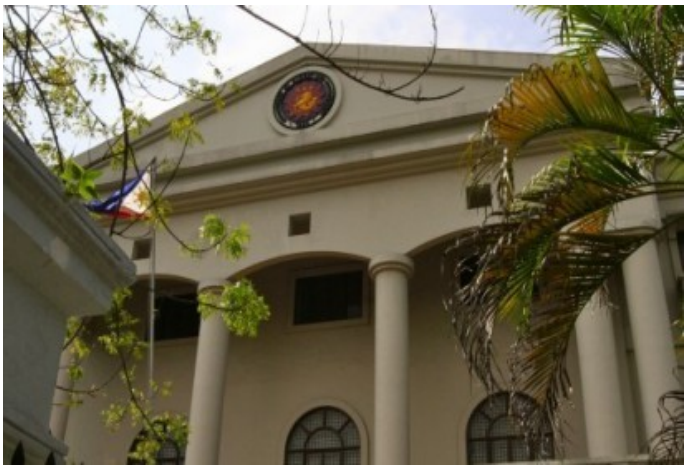
"In a statement, the DOF reported that the outstanding public sector debt as of end-June last year was lower than the P7.6 trillion at end-March. This was attributed to the decline in both domestic and foreign liabilities.

"As of the end of June, debt from domestic sources slid by 1 percent quarter-on-quarter to P5.3 trillion or 71 percent of the total, while external debt decreased by 2.8 percent to P2.2 trillion.

"The share of outstanding public sector debt to the gross domestic product (GDP) also improved to 61.9 percent as of June last year from 70.2 percent a year ago.

"According to National Treasurer Roberto B. Tan, "the downward trajectory of debt attests to our commitment for a more fiscally sustainable future." (Source: PDI, 10 February 2015)

[*] This '**Tax News Digest**' shall endeavor to provide the reader the latest information and events relevant to taxation and appurtenant issues, as published in leading daily newspapers and other pertinent sources. Compiled by Clinton S. Martinez, Indirect Taxes Branch.



"Government moves to speed up spending. Addresses weaknesses in budget process"

"The government has ordered agencies to prepare targeted spending measures to fast-track disbursement for public goods and services, according to the Department of Budget and Management (DBM).

"In a statement Monday, Budget Secretary Florencio B. Abad noted that the reforms that the DBM introduced during the past four years to facilitate faster release as well as efficient spending of government agencies' budgets "had revealed broad operational issues—ranging from weaknesses in project planning and procurement to insufficient capacity and compliance."

"It did not help that recent judicial decisions that were not favorable to previous, although controversial, sources of additional funding such as the Priority Development Assistance Fund or "PDAF as well as the Disbursement Acceleration Program or DAP made agencies "hesitant" to implement projects, according to Abad.

"Philippine Statistics Authority data showed that last year, government consumption grew by just 1.8 percent, slower than the 7.7-percent increase in 2013." (PDI, 10 February 2015)

"Filipinos seen 'overtaxed' by up to P1.8T"

"A legislator on Tuesday said Filipino taxpayers could have been "overtaxed" by up to P1.8 trillion under a taxation system that remained unadjusted since 1997, while the Department of Finance (DOF) readies proposals to plug leaks that may be caused by income tax reforms.

"During Tuesday's technical working group meeting of the House committee on ways and means, Bayan Muna Rep. Neri J. Colmenares claimed that P1.2 trillion to P1.8 trillion in excess taxes had been possibly collected from income earners.

"Colmenares later told the Inquirer that the figure was based on his group's initial calculations of the income brackets being slapped taxes even as these remained unadjusted to inflation since 1997.

"The militant lawmaker earlier filed House Bill (HB) No. 5401, which is aimed at restructuring income brackets and their respective tax rates. Colmenares proposes slapping income tax on earnings beyond an annual "living wage" of more than P300,000." (PDI, February 11, 2015)

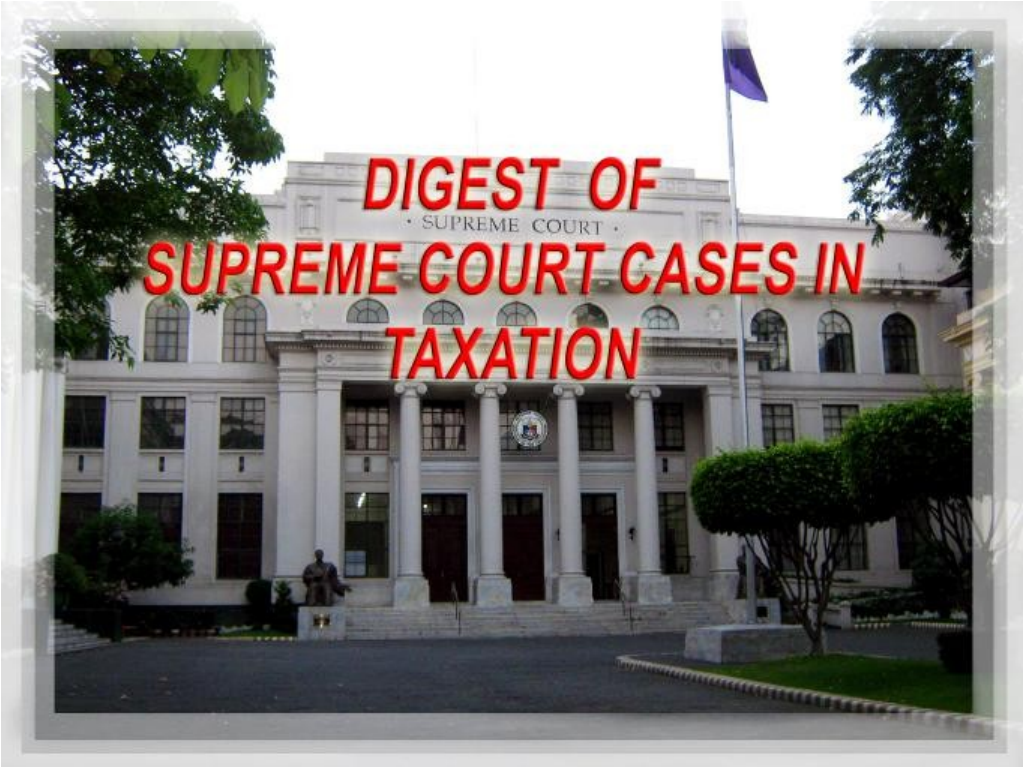
"PH exports up 9%to $61.8B in '14. External shocks may temper growth in 2015"

"Philippine-made goods shipped overseas rose 9 percent to $61.81 billion last year even as exports slightly dipped in December following 10 months of year-on-year increases

"The growth in both volume and value of locally manufactured products also slowed last December, the latest preliminary data released by the Philippine Statistics Authority (PSA) on Tuesday showed.

"For this year, exports would likely be "slightly tempered" by external factors such as the slower Chinese economy as well as deflation in the euro zone, according to the National Economic and Development Authority (Neda).

"PSA data showed that export revenues posted during the entire 2014 were almost a tenth more than the $56.7 billion recorded in 2013, hence exceeding the 6-percent growth target last year." (PDI, February 11, 2015)



COMMISSIONER OF INTERNAL REVENUE (CIR), Petitioner vs. TOLEDO POWER, INC., Respondent, G.R. No. 183880; January 20, 2014.

Facts:

Toledo Power, Inc. (TPI) seeks, from the Bureau of Internal Revenue (BIR), a refund or issuance of a tax credit certificate (TCC) for unutilized input value-added tax (VAT) attributable to its zero-rated sales of power generation services to several entities.

The BIR has not ruled upon said claim, hence TPI went to the Court of Tax Appeals (CTA). The latter ordered the BIR to refund TPI the amount of P8,088,151.07 only for the 3rd and 4th quarters of 2001.

Issues:

1. Whether TPI complied with the 120+30 day rule; and
2. Whether TPI complied with the invoicing requirements.

Held:

(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

(3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

(4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, as an exception to the

by: Mr. Clinton S. Martinez
SLSO II - Indirect Taxes

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mandatory and jurisdictional 120+30 day periods.

The SC added: "*Clearly, therefore, TPI's refund claim of unutilized input VAT for the third quarter of 2001 was denied for being prematurely filed with the CTA, while its refund claim of unutilized input VAT for the fourth quarter of 2001 may be entertained since it falls within the exception provided in the Court's most recent rulings."*

As to the invoicing requirements, the SC ruled that the words "zero-rated" appeared on the VAT invoices/ official receipts presented by TPI in support of its claim for refund.

The BIR was ordered to refund or issue tax credit certificate in favor of TPI only for the fourth quarter of 2001.

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PROCTER & GAMBLE ASIA PTE LTD., Petitioner vs. COMMISSIONER OF INTERNAL REVENUE (CIR), Respondent, G.R. No. 202071; February 19, 2014.

Facts:

"This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing of Tax Appeals (CTA) *En Banc* Decision and Resolution in CTA EB No. 746, which denied petitioner's claim for refund of unutilized input value-added tax (VAT) for not observing the mandatory 120-day waiting period under Section 112 of the National Internal Revenue Code.

"On 26 September and 13 December 2006, petitioner filed administrative claims with the Bureau of Internal Revenue (BIR) for the refund or credit of the input VAT attributable to the former's zero-rated sales covering the periods 1 July-30 September 2004 and 1 October - 31 December 2004, respectively.

"On 2 October and 29 December 2006, petitioner filed judicial claims docketed as CTA Case Nos. 7523 and 7556, respectively, for the aforementioned refund or credit of its input VAT. Respondent filed separate Answers e Court to the two cases, which were later consolidated, basically arguing that petitioner failed to substantiate its claims for refund or credit."

Issue:

Whether the 120-day waiting period, reckoned from the filing of the administrative claim for the refund or credit of unutilized input VAT before the filing of the judicial claim, is not jurisdictional.

Held:

The SC said:

"On 3 June 2013, we required respondent to submit its Comment, which it filed on 4 December 2013. Citing the recent case CIR v. San Roque Power Corporation, respondent counters that the 120-day period to file judicial claims for a refund or tax credit is mandatory and jurisdictional. Failure to comply with the waiting period violates the doctrine of exhaustion of administrative remedies, rendering the judicial claim premature. Thus, the CTA does not acquire jurisdiction over the judicial claim.

"Respondent is correct on this score. However, it fails to mention that *San Roque* also recognized the validity of BIR Ruling No. DA-489-03. The ruling expressly states that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review."

"The Court, in *San Roque*, ruled that equitable estoppel had set in when respondent issued BIR Ruling No. DA-489-03. This was a general interpretative rule, which effectively misled all taxpayers into filing premature judicial claims with the CTA. Thus, taxpayers could rely on the ruling from its issuance on 10 December 2003 up to its reversal on 6 October 2010, when *CIR v. Aichi Forging Company of Asia, Inc.* was promulgated.

"The judicial claims in the instant petition were filed on 2 October and 29 December 2006, well within the ruling's period of validity. Petitioner is in a position to "claim the benefit of BIR Ruling No. DA-489-03, which shields the filing of its judicial claim from the vice of prematurity.

***"WHEREFORE**, the petition is **GRANTED**. The Decision and Resolution of the Court of Tax Appeals En Banc* in CTA EB No. 746 are **REVERSED** and **SET ASIDE**. This case is hereby **REMANDED** to the CTA First Division for further proceedings and a determination of whether the claims of petitioner for refund or tax credit of unutilized input value-added tax are valid."

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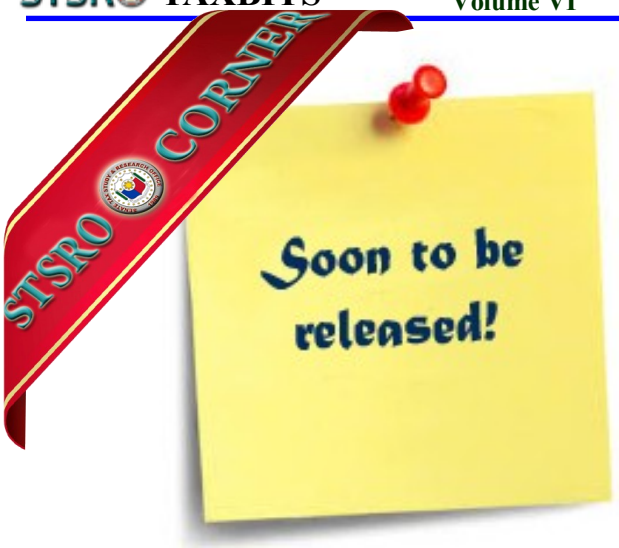

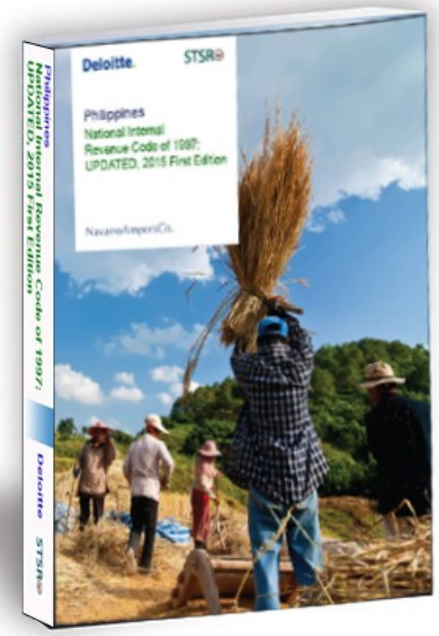

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Philippines
National Internal Revenue Code of 1997: UPDATED, 2015 First Edition

The Senate Tax Study and Research Office (STSRO) in partnership with Navarro Amper & Co. (Deloitte Philippines) will soon come up with a book containing updated provisions of the National Internal Revenue code (NIRC) of 1997 together with the relevant Revenue Regulations (RR).

Senate President Franklin M. Drilon in his foreword said:

> "*The latest book project entitled, "NIRC Tax Provisions With Relevant Revenue Regulations", provides us with a comprehensive yet simplified codification of the latest amendments in the tax laws. The book synthesizes the current and applicable tax laws and the revisions or modifications brought about by the latest amendments. It is indeed a reliable and helpful reference tool for all engaged in the enactment and practice law."*

On another note, Senator Ralph G. Recto said :

> "*The book is intended to provide valuable information that will guide our tax authorities and taxpayers, as well as students and tax consultants in better understanding the tax laws and regulations, and consequently draw compliance."*

In the forthcoming book, Senator Sonny Angara mentioned in his foreword:

> "*This updated Tax Code reference book would help us better understand and apply the amended tax laws and their corresponding revenue regulations which have been ingrained into the country's complicated system of taxation. This would further guide us in crafting new laws that would lead to a simplified, progressive, more just and equitable tax system which would ultimately help our workers and families promote savings and upward mobility in our society".*

STSRO Director General Atty. Rodelio T. Dascil, MNSA wrote:

> Moreover, the same "*X x x aims to help in the dissemination of new tax laws. This objective is anchored on the duty to support efforts to achieve high standards in the spreading of information regarding the amendatory laws and their implementing rules and regulations.*
>
> *"This work is written not only to guide the taxpayers, business administration students, bookkeepers, accountants, law students, practicing lawyers and professors, but also the ordinary citizens who may find this book of great help in knowing the difficult subject of taxation."*

Given the above positive and encouraging words, it is prayed that the forthcoming endeavor would live up to expectations.

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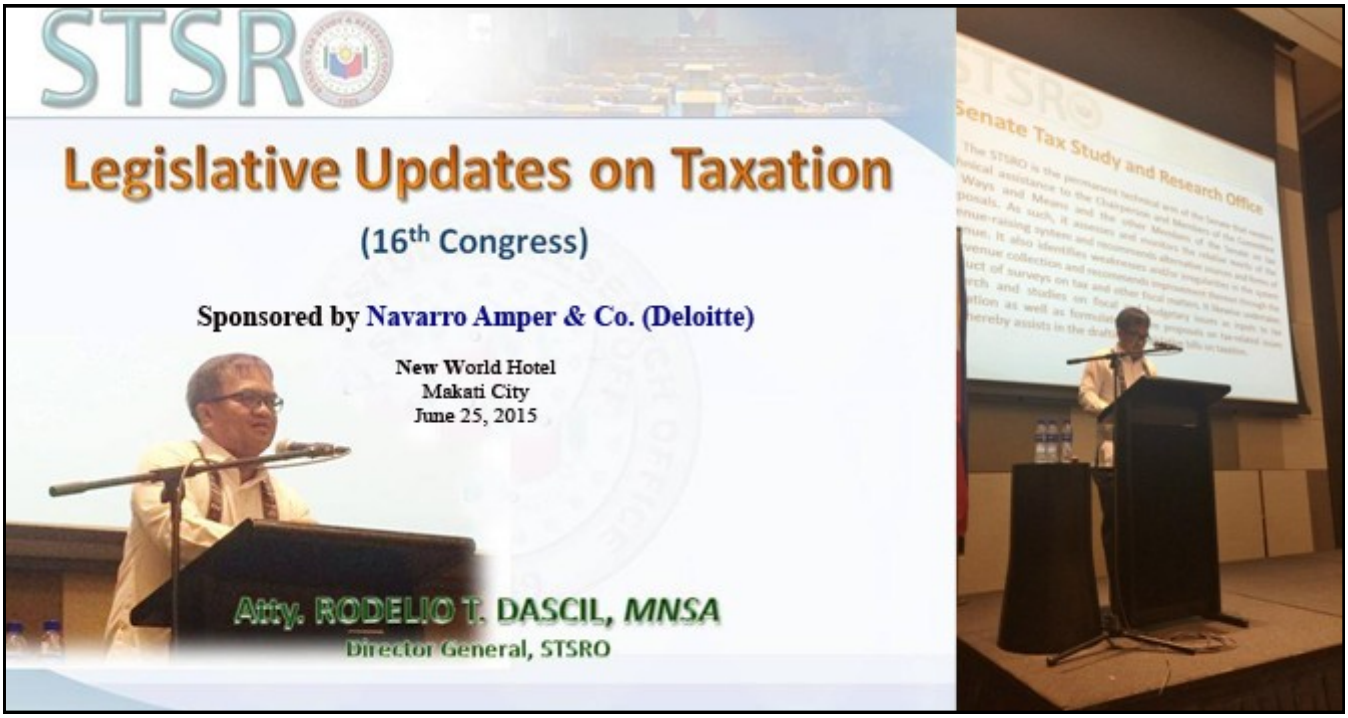
* Draft cover

ENGAGEMENTS



Seminar on Integrity Gender Perspective in Leadership and Management.

(June 2-4, 2015)

Attendees:

1. **Dir. Maria Lucrecia R. Mir, PhD, MNSA**
   Director III, Direct Taxes Branch
2. **Dir. Elvira P. Crudo**
   Director II, Direct Taxes Branch
3. **Atty. Sherry Anne C. Salazar**
   Director II, Indirect Taxes Branch
4. **Dir. Vivian A. Cabiling**
   Director III, Indirect Taxes Branch
5. **Dir. Norberto M. Villanueva**
   Director II, Tax Policy & Admin Branch

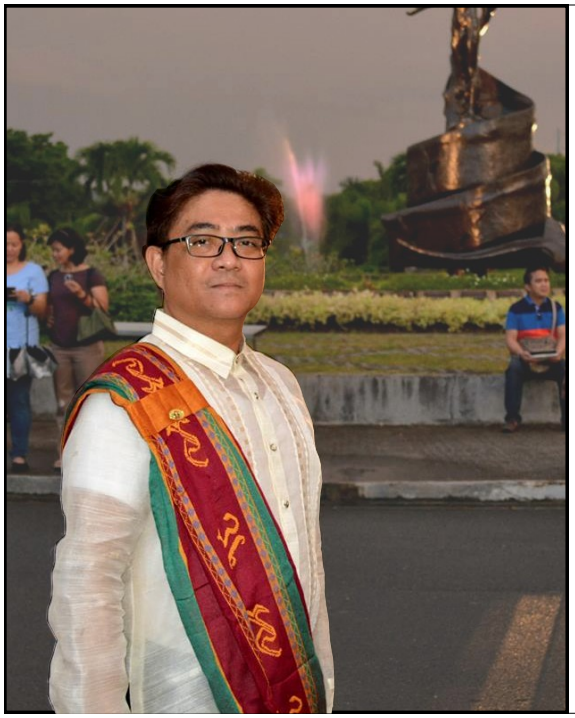
Seminar on Coaching and Monitoring: Leadership Techniques for Better Individual & Organizational Performance.

(June 25, 29, 30, 2015)

Attendees:

1. **Dir. Elvira P. Crudo**
   Director II, Direct Taxes Branch
2. **Atty. Sherry Anne C. Salazar**
   Director II, Indirect Taxes Branch
3. **Dir. Norberto M. Villanueva**
   Director II, Tax Policy & Admin Branch

Congratulations



Dir. Bong Villanueva

Master of Development Communication

University of the Philippines
(Open University)

July 27, 2015

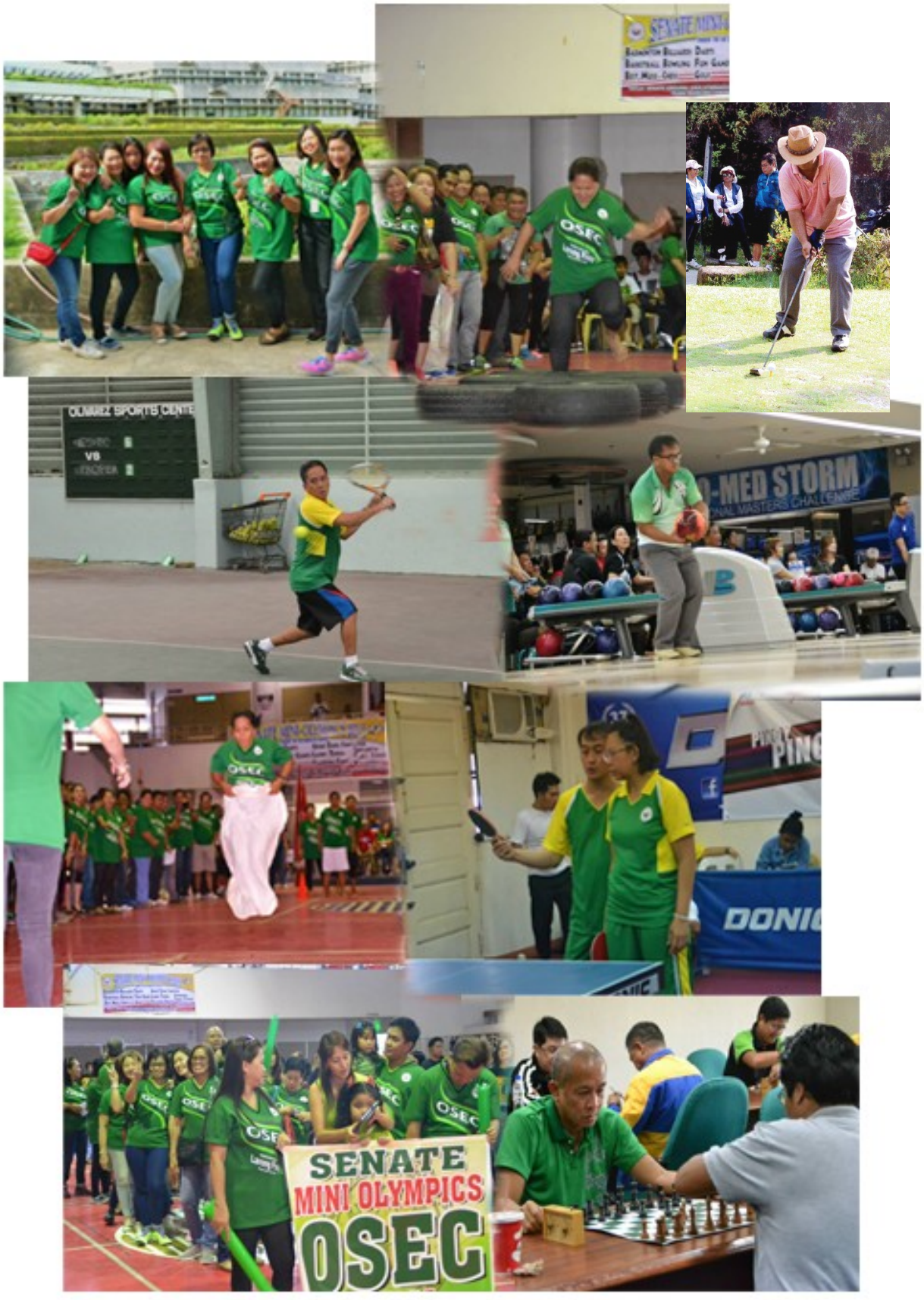
Congratulations

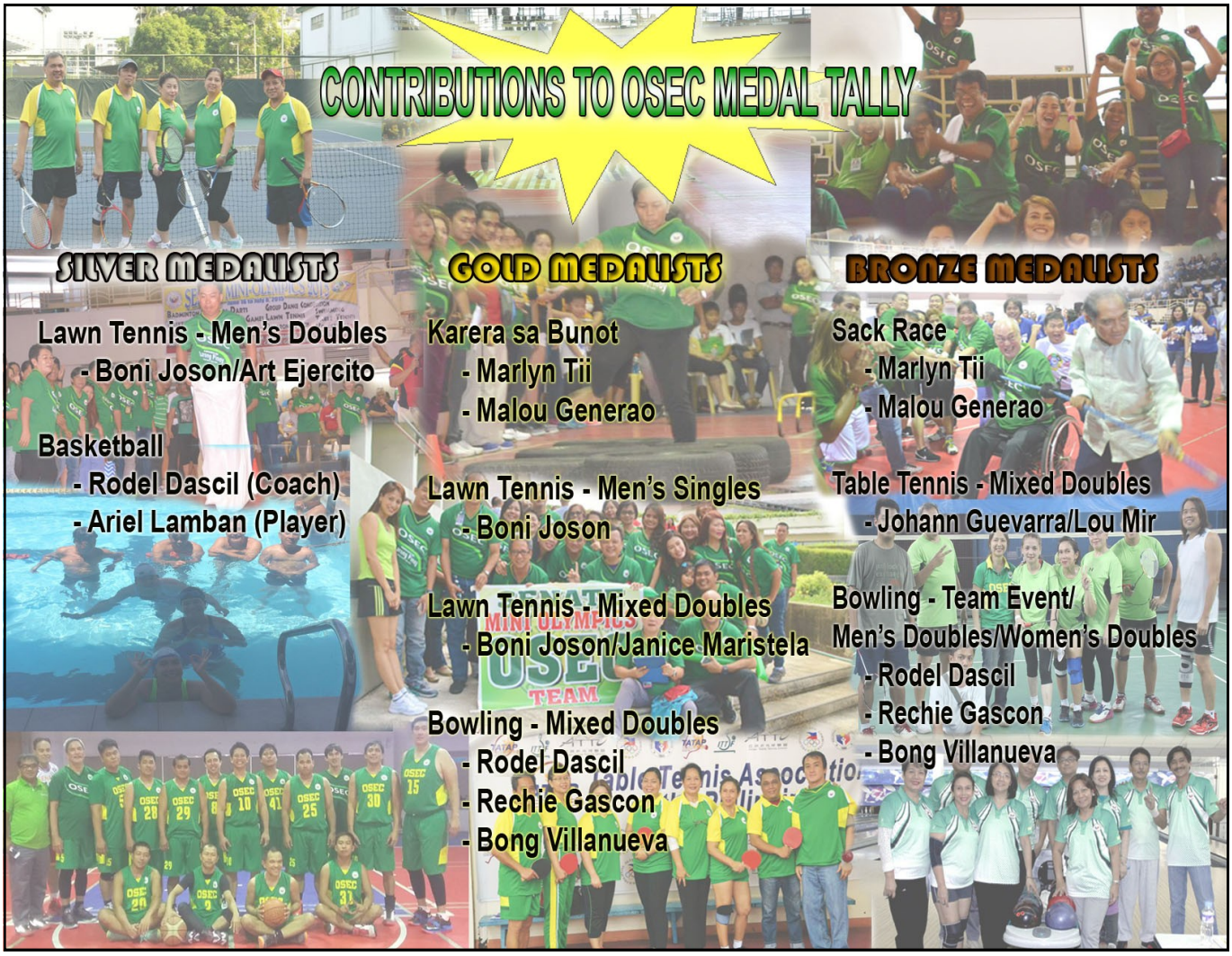
Mr. Boni Joson

Lay-out Artist of the STSRO Taxbits, for successfully passing the Civil Service Professional Examination on May 3, 2015.

Our Athletes in the Senate Mini-Olympics 2015

June 16, 2015 to July 9, 2015





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