



Volume IV

21st Issue

September - October 2013



by

**Rechilda B. Gascon, MNSA**

Director III, Tax Policy & Admin

**R**epublic Act 6758<sup>1</sup> known as the Salary Standardization Law (SSL) prescribes that all agencies and instrumentalities of the government shall have a uniform salary structure. The Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) are covered by this law which imposes uniform salaries for employees of the same rank in all government agencies.

However, in many instances, the Government has authorized the exemption of various government institutions and agencies from SSL [(e.g. Financial Institutions such as, Land Bank of the Philippines (LBP), Bangko Sentral Ng Pilipinas (BSP), Government Service Insurance System (GSIS), Social Security System (SSS), Philippine Deposit and Insurance Corporation (PDIC) Al-Amanah Islamic Investment Bank of the Philippines (AMANAH); Government Owned and Controlled Corporations, such as, Philippine Economic Zone and Development Authority (PEZA), National Power Corporation (NAPOCOR), Philippine Health Insurance Corporation (PHILHEALTH) etc.] citing the following reasons for their exemptions, namely:

- The pivotal role they play in the economy;
- The necessity in hiring and retaining qualified and effective personnel to carry its mandate;
- The recognition that the compensation package is not competitive, and falls substantially below industry standards.

Why then discriminate the BIR and the BOC and not grant them the flexibility to modify their compensation and position classification system? This is also in accordance with the law with respect to equal protection clause in terms of social and economic equality. (Section 1, 2 and 3 of Article XIII – Provisions on

<sup>1</sup> RA 6758 known as “An Act Prescribing a Revised Compensation and Position Classification System in the Government and For Other Purposes”.

Reduction of Social, Economic and Political Inequalities and Promotion of Social Justice (Section 10, Article II of the Constitution).



Section 2 of the National Internal Revenue Code (NIRC)<sup>2</sup>, as amended, provides:

*“SEC. 2. Powers and Duties of the Bureau of Internal Revenue. – The Bureau of Internal Revenue shall be under the control and supervision of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.”*

The BOC on the other hand is given the following functions under Section 602 of the Tariff and Customs Code:

*“SEC. 602. Functions of the Bureau. – The general duties, powers and jurisdiction of the bureau shall include:*

- a. The assessment and collection of the lawful revenues from imported articles and all other articles and all other duties, fees, charges, fines and penalties accruing under the tariff and customs laws;*

- b. The prevention and suppression of smuggling and other frauds upon the customs;*
- c. The supervision and control over the entrance and clearance of vessels and aircraft engaged in foreign commerce;*
- d. The enforcement of the tariff and customs laws and all other laws, rules and regulations relating to the tariff and customs administration;*
- e. The supervision and control over the handling of foreign mails arriving in the Philippines, for the purpose of the collection of the lawful duty on the dutiable articles thus imported and the prevention of smuggling through the medium of such mails;*
- f. Supervise and control all import and export cargoes, landed or stored in piers, airports, terminal facilities, including container yards and freight stations for the protection of government revenue;*
- g. Exercise exclusive original jurisdiction over seizure and forfeiture cases under the tariff and customs laws.”*



Considering the critical and huge responsibility given to BIR and BOC i.e., to collect and generate revenues for the entire government to finance its priority projects and development, is high time that these profit centers of the government be exempted from the SSL. The following are the reasons why we really have to exempt these two revenue-generating agencies of the Government from the SSL:

<sup>2</sup> RA 8424, otherwise known as the “Tax Reform Act of 1997”.

1. The BIR and the BOC are the two most important agencies of the Government since they are the primary agencies mandated by law to collect taxes. The BIR and the BOC collect almost ninety percent (90%) of the total government revenues in a given year, as shown in Table 1.

**Table 1**  
**National Government Revenues, By Collecting Agencies**  
(In Billions of Pesos)

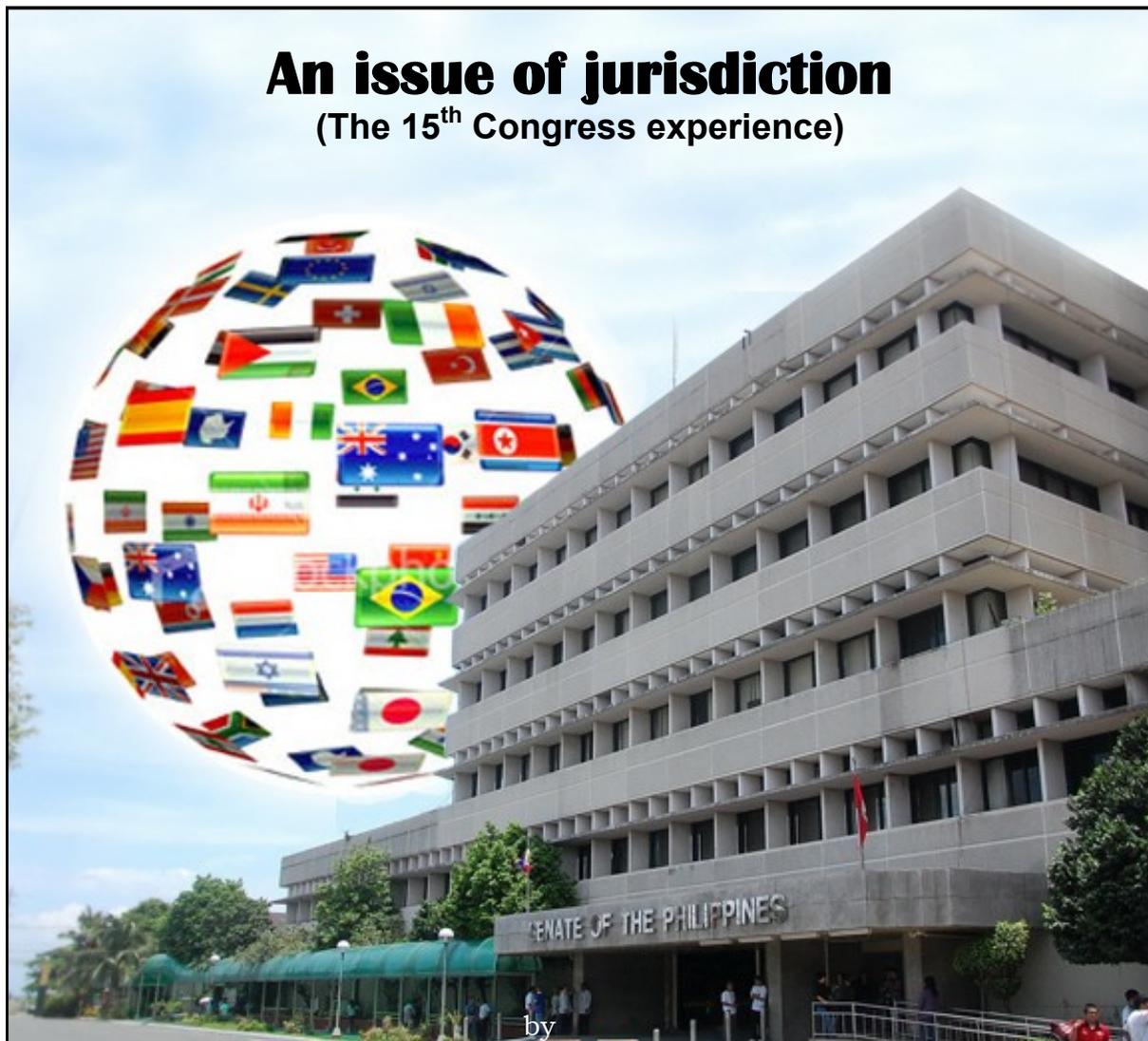
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<b>BIR</b>	427.4	270.4	542.7	652.7	713.6	778.6	750.3	822.6	924.1	1,057.9
% collection	66%	66%	66%	66%	62%	65%	67%	68%	68%	69%
<b>BOC</b>	177.2	127.3	154.6	198.2	209.4	260.2	220.3	259.2	265.1	289.9
% collection	18%	18%	18%	20%	18%	22%	20%	21%	19%	19%
<b>BIR and BOC collections</b>	544.60	579.70	697.30	855.90	923.00	1,038.8	970.6	1,081.8	1,189.2	1,347.8
% collection	85%	84%	85%	87%	81%	86%	86%	89%	87%	88%
<b>Other Offices</b>	95.2	109.1	118.9	128.7	213.6	164.1	152.6	126.1	170.7	187.1
<b>TOTAL REVENUES</b>	639.7	706.7	816.2	979.6	1,136.6	1,202.9	1,123.2	1,207.9	1,359.9	1,534.9

Source: Department of Finance Economic

These revenues are used by the government to finance its priority projects such as, education, social services, infrastructure, among others.

- Because the BIR and the BOC are covered by RA 6758 otherwise known as the "Salary Standardization Law" (SSL) which imposes uniform salaries for employees of the same rank in all government agencies, many employees of these agencies after gaining sufficient knowledge and expertise in tax collection, tax audit, and tax administration are pirated by large accounting firms and IT companies where they are given much bigger salaries and benefits.
- Considering the critical role of the BIR and the BOC, i.e. to collect billions of pesos to support various priority programs and projects to attain our economic development, there is an urgent need to boost their morale by giving them higher salary and better benefits by removing them from the coverage of the SSL. This will further motivate BIR and BOC employees and encourage them to improve their collection performance and meet their revenue targets. This will likewise professionalize the BIR and BOC and reduce the incidence of corruption.
- At present, there are a number of government agencies (e.g. Government Service Insurance System (GSIS), Social Security System (SSS), Bangko Sentral Ng Pilipinas (BSP), Land Bank of the Philippines (LBP), PAG-IBIG, Philippine Economic Zone Authority (PEZA), Development Bank of the Philippines (DBP), etc.) that are already outside the coverage of the Salary Standardization Law. Thus, exempting the BIR and the BOC from the SSL is necessary to promote efficiency and an improved performance for increased revenue collections.
- The Department of Finance, the mother agency of BIR and BOC, supports the move to exempt these two agencies from the coverage of the Salary Standardization Law.

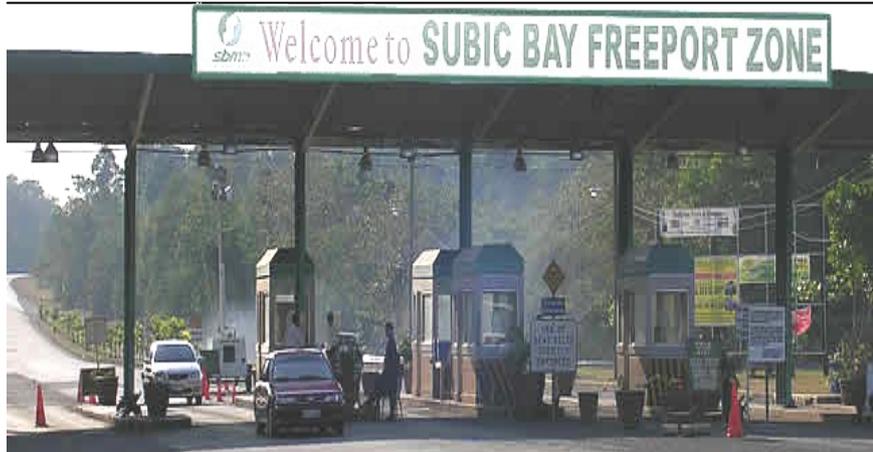
6. Human resource is the main asset in any organization, particularly in the case of the BIR and the BOC. Therefore there should be competitive pay scale provided to these agencies to attract and retain tax collectors and administrators. However, the upgrading of the pay scale should be coupled with proper job description that will breed good morale, work ethics, and revitalize workforce.
7. It is thus fitting and fair to give the BIR and the BOC officers and employees the necessary support and financial motivation considering their critical role of being a bread winner for the country.



**ATTY. EMMANUEL M. ALONZO**  
Director III, Legal and Tariff

## Background

On February 1, 2010, the Philippine Senate acceded to the Revised Kyoto Convention (RKC). Unfortunately, the Senate did not accede to all the provisions of the RKC because some provisions were deemed too liberal under Philippine conditions and the country was not yet ready for them. Anyway, the RKC rules allowed its member countries to accede to the reserved provisions for a later date as the Philippines may deem fit.



because of its liberal provisions. Before the Senate had an opportunity to consolidate both versions, the election period for 2013 started, leaving a status quo situation.

Hopefully, with the 16th Congress, a new anti-smuggling bill would be drafted incorporating the provisions of the RKC. After all, treaties like the RKC, once approved by the Senate, forms part of the law of the land.

### Freezones

Most of the reserved provisions pertained to the operations of “freezones”. Under the RKC, freezones means our country’s freeports and ecozones. Nevertheless, the term freezone was accepted by the Philippine Senate.

Our existing freeports have their own charters while the ecozone locators were governed by the PEZA (Philippine Economic Zone Authority) charter. Under the RKC, ecozones and freeports were treated the same, under the jurisdiction of the Bureau of Customs (BOC).

From the point of view of the Senate, the acceptance of the word freezone at the same time rejecting some provisions pertinent to freezones was a practical move considering that Congress was still evaluating the bills on fiscal incentives as well as the anti-smuggling bills.

Freezones were established in order to attract foreign investors to the Philippines by giving them fiscal incentives. In doing so, freezones were made to be outside the tax and duty jurisdiction of the country, thereby granting them some autonomy in their operations. Operating freezones therefore serve as a magnet to both foreign investors and the smugglers.

Once the fiscal incentive bills are rationalized and the anti-smuggling bill enacted, then it would be time to revisit the reserved RKC provisions for possible acceptance.

The Senate and the House of Representatives took different paths in the enactment of the anti-smuggling bills. The Senate version, SB 2408, which was filed on August 22, 2010 did not incorporate the RKC. The House of Representatives, on the other hand, passed on third reading the CMTA (Customs Modernization and Tariff Act of 2011, which was transmitted to the Senate on the same day.

The Senate evaluated the CMTA but found it too liberal, in other words, it would increase smuggling

The RKC provision provides for the following:

*“National legislation shall specify the requirements relating to the establishments of freezones, the kinds of goods admissible to such zones and the nature of the operations to which goods may be subjected to them.”* (Revised Kyoto Convention [RKC], Specific Annex D, Chapter 2, 2. Standard)

While freeports are located in a contiguous area, the ecozones (PEZA locators) are located within the tax and duty jurisdiction of the country. Domestically produced products used as raw materials inside the freezone are considered as “constructive” importation and afforded the same treatment as if such products were exported out of the country.

Transfer of products and raw materials to and from an ecozone is more complex than in freeports. Products entering an ecozone are tax and duty free, at the same time the place of production (an ecozone locator) is located in an area within the tax and duty of the country. Although smuggling may occur in both a freeport and an ecozone, more vigilance is needed in the case of the latter.

### Focusing on Ecozones

The following provisions of RA 7916, the PEZA Charter, define the status of the PEZA locators from the point of view of taxation:

1. *“To vest the special economic zones on certain areas thereof with a status of a separate customs territory within the framework of the Constitution and the national sovereignty and territorial integrity of the Philippines.”* (Section 3, Purposes, Interests and Objectives, RA 7916)
2. *“Free Trade Zone” – an isolated policed area adjacent to a port of entry (as a seaport) and/or airport where imported goods may be*



**PHILIPPINE  
ECONOMIC  
ZONE  
AUTHORITY**



unloaded for immediate transshipment or stored, repacked, sorted, mixed, or otherwise manipulated **without subject to import duties. However, movement of these imported goods from free-trade area to a non-free-trade area in the country shall be subject to import duties. Enterprises within the zone are granted preferential tax treatment and immigration laws are more lenient.** (Section 4(d), Definition of Terms, RA 7916)

3. "The area must be situated where **controls** can easily be established to curtail smuggling activities." (Section 6 (h), Criteria for the establishment of other ECOZONES)
4. "The PEZA is hereby vested with the authority to issue certificate of origin for products manufactured or processed in such ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance." (Section 8, ECOZONE to be Operated and Managed as Separate Customs Territory)
5. "Goods manufactured by an ECOZONE enterprise shall be made available **for immediate retail sales in the domestic market**, subject to payment of corresponding taxes on raw materials and other regulations that may be adopted by the Board of the PEZA."

"However, in order to protect the domestic industry, there should be a negative list on industries that will be drawn up by PEZA. Enterprises engaged in the industries included in the negative list shall not be allowed to sell their products locally. Said negative list shall be regularly adopted by the PEZA."

"The PEZA, in coordination with the Department of Trade and Industry and the Bureau

of Customs, shall jointly issue the necessary implementing rules and guidelines for the effective implementation of this Section."

In spite of the law provisions regarding PEZA and its locators, public perception is that smuggling is rampant within the PEZA system. In a news item<sup>3</sup>, such perception was concretely described:

*"The unrestrained graft and corruption via ECOZONES apparently never bother PEZA authorities even though its own officials and employees are direct participants in the commission of a crime that has brought this country to shame and mockery in intra country and regional conferences, where the Philippines has been dubbed as a smuggling hub. Graft and corruption in PEZA continues unabatedly up to now in the form of smuggling goods purportedly imported for companies located inside the various ECOZONES."*

*"PEZA needs a strong hand to stop smuggling activities committed under the very noses (if not with their connivance) of its authorities. Smugglers are determined robbers and thieves. They have to be contained with equivalent force."*

Ecozones are directly managed by PEZA, assisted by the DTI (Department of Trade and Industry) and the BOC (Bureau of Customs). The BOC function is to protect government revenues in the form the payment of taxes and duties.

#### **Freeports : A concrete example**

During the 15<sup>th</sup> Congress, the Senate investigated rice smuggling through a freeport, the Port of Subic. The following is a summary of such investigation.

Rice, originally intended for transshipment was unloaded through Subic port. In its entry document, it stated that the product was for transshipment. Transshipment meant that the rice import would only pass through Subic, intended to another foreign port. In other words, it was not the intention of the importer to sell the rice import to the domestic market. Because of the entry declaration, taxes and duties were not paid. Even if the import was for transshipment, the cargo was unladen was stored in a warehouse located inside the freeport. Consider the following TCCP (Tariff and Customs Code of the Philippines) provisions:

*"Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with the intention to unlade therein. Importation is deemed terminated upon*

<sup>3</sup> Mariano D. Castro, *PEZA blind to unrestricted smuggling in ECOZONES*, Philippine Daily Inquirer, February 19, 2012 (Tuesday).



*payment of taxes, duties and other charges due upon the articles, or secured to be paid, at the port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs.” (Section 1202, When importation begins and deemed terminated, TCCP)*

Both the Subic authorities and the BOC supervised the unloading of the cargo for warehousing purposes. The applicable provision is as follows:

*“Imported articles must be entered in the customshouse at the port of entry **within thirty (30)**, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft...” (Section 1301, Persons authorized to make import entry, TCCP)*

While the import, originally intended for transshipment, was still inside the Subic warehouse, its owners had a change of mind. They searched for domestic buyers, abandoning the original transshipment intention.

The change of position of the importers from transshipment to domestic consumption made such importation illegal. Rice, being a regulated commodity in the Philippines needs an NFA license to import before the actual importation. Technically, smuggling occurred transferring the jurisdiction from the Subic authorities to the BOC.

To circumvent the law, financiers entered the scenario by recruiting rice cooperatives. The financiers aided these cooperatives for them to get the necessary NFA licenses by participating in the bidding process as well as promising them profits if the rice imports would be sold domestically. To make matters more manageable, the cooperatives were urged to form federations.

The whole scheme did not work out because it was exposed and caught media attention.

In this case, the general principle is that whenever an imports is still inside the premises of a freeport, primary jurisdiction rests with the freeport authorities. However, if the importation would become a smuggling scheme, it is the BOC not the freeport authorities who should have the upper hand, even if such import is still inside the freeport premises. For crimes committed inside freeports, the Philippine government has jurisdiction.

If the rules are simple and few entities are involved, smuggling may be curtailed. Realizing the situation, the BOC issued Customs Memorandum Orders (CMOs) to streamline the interaction of the BOC with the PEZA and the freeports.

**Administrative issuances  
Customs Memorandum Orders (CMOs)**

CMOs were issued by the BOC to implement the TCCP (Tariff and Customs Code of the Philippines) and related laws like the charters of the freezones and the ecozones.

Some of these CMOs are as follows:

**1. March 4, 2011  
CMO No. 15-2011**

*Guidelines for the implementation of the Enhanced Automated Cargo Transfer System (E-ACTS) for goods discharged at the Ninoy Aquino International Airport (NAIA) with Economic and Freeport Zones as final destinations*

It applies to all transit shipments consigned to economic and Freeport zone locator enterprises [PEZA (Philippine Economic Zone Authority), AFAB (Authority of the Freeport Area Bataan), CDC (Clark Development Corporation), and the SBMA (Subic Bay Metropolitan Authority)] discharged at the Ninoy Aquino International Airport (NAIA) which shall be declared under the e2m (electronic to mobile) Customs Transit System. All clients and stakeholders (importers, brokers) filling/submitting the electronic documents under e2m Customs System shall apply for e2m Customs registration by electronically submitting the data and information through the Client Profile Registration System (CPRS). Registered stakeholders shall be issued both the COR (Certificate of Registration) and the CCN (Customs Client Number). The CCN is the importer's unique identifier in the e2m Customs, enabling him to obtain the services allowed by his profile. The CCN is issued to the stakeholder by way of a Certificate of Registration.

**2. January 5, 2011  
CMO No. 7-2011**

*Guidelines and procedures implementing BOC-PEZA Joint Memorandum Order No. 04-2010 on the Automated Export Documentation System (AEDS) for export shipments of Economic Zone Export-Producers loaded at the Ninoy Aquino International Airport (NAIA), Diosdado Macapagal International Airport (DMIA), Mactan-Cebu International Airport (MCIA), Port of Manila (POM), Manila International Container Port (MICP), Port of Subic (POS), and Cebu International Airport (CIP).*

It governs **export shipments** of economic zone export-producers loaded at the pertinent ports/airports, except those with export clearance requirements. Export shipments of economic zone export-producers, which have export clearance requirements, even if they are loaded at the pertinent airports shall continue to be processed following standard requirements and procedures.

**3. January 5, 2011  
CMONo. 6-2011**

*Enhanced Automated Cargo Transfer System (E-ACTS) for import shipments consigned to Economic Zone Locator Enterprises discharged at airports with operating ACOS (automated customs operating system) and with the economic zone as final destination*

It defines and clarifies details of the provisions of JMO No. 05-2010 pertaining to the implementation of the Enhanced Automated Cargo Transfer System (E-ACTS) for the processing of PEZA-authorized tax and duty-exempt import shipments of economic zone locator enterprises in the airports and seaports of discharge, for clearance, release and transfer for their economic zone destinations. The electronic Import permit (e-IP) lodged and approved through the PEZA Electronic Import Permit System (e-IPS) is the one and only document to be accepted by the BOC as proof of PEZA's authorization for the tax and duty-exempt importation of an economic zone.

**4. September 15, 2010  
CMO No. Order 7-2010**

*Rules and Regulations governing Customs operations in the Freeport Area of Bataan*

CMO 7-2010 adopts specific rules and regulations governing and facilitating the free flow, entry and movement of machinery, raw materials and other articles at Bataan Freeport Area.

**5. May 2010 (exact day not specified)  
CMONo. 4-2010**

*Establishing an Enhanced Customs Transit System with the use of Global Positioning System*

The BOC is directed to use the Global Positioning System (GPS) for the sealing, tracking, monitoring and audit of transit cargo. It adopts the RKC (Revised Kyoto Convention) definition of customs transit and rectify the current definition of transshipment. Considering the existence of Freeport areas and Special Economic Zones (SPZs) which are considered as **being outside the Customs territory** of the Philippines, the movement of goods or cargoes from a Customs office to Freeport are SPZs and vice-versa as well as from one Freeport area/SPZ to another crossing the Customs Territory is considered as transit operation and thereby covered by the this Order.

**6. May 12, 2010  
CMO No. 3-2010**

For purposes of the Discharge Port Survey (DPS) during the transition period and pending the integration of the automation requirements of the ASC into the Bureau's e2m System, **a one stop shop is hereby created...**

**7. December 22, 2010  
Joint Memorandum Order No. 5-2-10**

*Enhances automated cargo transfer system (E-ACTS) for transit of goods of Economic Zone Locator Enterprises discharged in all ports and airports.*

It applies to airports and seaports where the ACOS (Automated Customs Operating System) is operational, which includes (but not limited to) the following: (a) Ninoy Aquino International Airport (NAIA), (b) Port of Manila (POM), (c) Manila International Container Port (MICP), and (d) Diosdado Macapagal Airport (DMIA). It allows direct and immediate delivery and use of transit goods by economic zone enterprises, upon arrival of the transit goods at their economic zone destinations, **without the necessity of detaining the transit goods for inspection in the Customs**

**Clearance Area (CCA)** when the BOC Automated Risk Management and Selectivity program is already in place. The PEZA (Philippine Economic Zone Authority) shall implement the Electronic Import Permit System (e-IP). It supports the audit-based risk management system ensuring that transit of goods are safely conducted in a timely manner from port of discharge to their economic zone destinations.

**8. June 8, 2009  
CMO No. 24-200**

Among the amendments are as follows:

- a) The PEZA Section of the CPCO (Customs PEZA Clearing Office) shall scan the barcode of the Import Permit;
- b) Only Ecozone enterprises and customs brokers with active registration in ACOS (Automated Customs Operating System) can lodge electronic Transit Declarations;
- c) Ecozone enterprises shall post with the Bonds Division or equivalent office at the Port of Mactan, a Surety Bond issued by a surety company accredited by the BOC at the Port of Mactan, to serve as guarantee of payment of taxes and duties;
- d) Ecozone enterprises shall pay the BOC Cargo Transfer Fees (composed of Transit Service Fee and Import Processing Fee) for their transit goods by automatic debit form Pre-Payment Accounts they have established in the bank/branch designated by the Collector of the Port of Mactan in accordance with CMO 8-2005;
- e) For tax and duty-exempt import shipments arriving by sea at the CIP (Cebu International Port), the transit declaration shall be electronically lodged with the Port of Mactan through the VASP (Value Added Service Providers); and
- f) For an import shipment containing goods not covered by the tax and duty-exemption incentive granted by PEZA to an Ecozone Enterprise shall file for an amendment of the manifest at the port of discharge so that separate entries can be issued to cover goods and materials covered by the tax and duty-exemption incentives and those that are not covered by the incentives.

**Focus on the CMTA  
HB 4788, 15<sup>th</sup> Congress**

Under the CMTA, freeports and an ecozones were treated the same, thus:

*“Chapter 3 – Free Zones (PEZA Zones and Freeport Zones)*

*Section 813. Free Zones. – Unless otherwise provided by law, goods admitted into free zones, such as special economic zones registered with PEZA under RA 7916, duly chartered or legislated freeports under RA 9400, the Aurora Special Economic Zone under RA 9490, Cagayan Special Economic Zone and Freeport under RA 7922, the Zamboanga City Special Economic Zone under RA 7903, and the Freeport Area of Bataan under RA 9728, shall be subject to duty and tax.*

*Entry under the freezones, whether directly or through the customs territory, shall be covered by the necessary goods declaration for transit and withdrawal from free zones into the customs territory shall be covered by the necessary goods declaration for consumption and for warehousing.*

*Transfer of articles from one free zone into another free zone shall likewise be covered by the necessary transit permit.”*

From the point of view of the RKC, the general rule is that whenever goods enter a freezone, taxes and duties must be paid. However, the RKC also provides that if there is a law to the contrary, taxes and duties and duties may not be paid.

The RKC gives the Philippines an option to continue the current procedure, or to impose the payment of taxes and duties on all products entering the freezones, subject to reimbursement once the finished product made in the freezones is exported.

The idea is not new. During the Senate public hearings on the anti-smuggling bills, it was proposed that all importations must pay taxes and duties subject to reimbursement once the exportation would be made. The proposal would eliminate smuggling but the domestic industries objected saying that the proposal would increase financing cost, which would eventually be translated into higher costs for Philippine export products.

Once taxes and duties are paid upon entry, regardless of its destination, the freezone or the domestic market, freeports and ecozones must be treated the same. There lies the logic of the RKC provision.

The CMTA provision mentioned the following laws: (a) RA 9400, Aurora Special Economic Zone, (b) Cagayan Special Economic Zone and Freeport, (c) RA 7903, Zamboanga City Special Economic Zone, (c) RA 9703, Freeport Area of Bataan, and RA 7916, the PEZA charter. Not included in the enumeration are the freeports are Clark and Subic.

The pertinent provisions on extraterritoriality of freeports are given below:

<p><b>RA 10083 (July 27, 2009)</b>  <b>Amending RA 9490</b>  <b>RA 9490 (February 19, 2007)</b>  <b>Aurora Pacific Economic Zone and Freeport Act of 2010</b></p> <p><i>...(2) Tax Treatment of Merchandise in Free Trade/Freeport Zone. – The Aurora Ecozone shall be operated and managed as a separate customs territory ensuring free low or movement of goods within, into and exported out of the free trade/Freeport zone. Importations of raw materials and capital equipment are tax and duty free. However, exportations or removal of goods from the free trade/Freeport zones to the other parts of the Philippine territory shall be subject to customs and internal revenue regulations. (Section 5. Incentives to Registered Enterprises, RA 10085)</i></p>
<p><b>RA 7922 (February 24, 1995)</b>  <b>Cagayan Special Economic Zone of 1995</b></p> <p>RA 7922 does not have any provision declaring the Cagayan Special Economic Zone “<i>shall be operated and managed as a separate customs territory</i>”. However, the Charter has provisions delineating its powers and functions.</p>
<p><b>RA 7903 (February 23, 1995)</b>  <b>Zamboanga City Special Economic Zone Act of 1995</b></p> <p><i>...”(d) The ZAMBOECOZONE shall be managed and operated as a separate customs territory to ensure and facilitate the free flow, entry and movement of machinery and other goods. It shall be vested with authority to issue certificates of origin for products manufactured or processed in the ZAMBOECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the duly recognized national bodies tasked to oversee all other ecozones in the country. (Section 4, Governing Principles, RA 7903)</i></p>
<p><b>RA 9728 (July 17, 2009)</b>  <b>Freeport Area of Bataan (FAB) Act of 2009</b>  <b>Amending RA 5490 and PD 66</b></p> <p><i>...”(e) The FAB shall be managed and operated as a separate customs territory ensuring free flow or movement of goods and capital within, into and out of its territory.” (Section 4-e, RA 9728)</i></p>

**Policy direction**

Section 813 of the CMTA provides for the payment of taxes and duties on all imported goods entering the freezones, under one condition – “...*unless otherwise provided by law*”. The implication is that all imports shall pay taxes and duties regardless of its destination, either the freezones or the domestic market.

Aside from the objections from the domestic industries that such a move would increase financing cost, the suggestion is viable and practical. Smuggling occurs because importers avoid the payment of taxes and duties. If all imports would pay taxes and duties there would be no smuggling, except prohibited exports like illegal drugs and ammunitions.

However, the tax credit scam still lingers in the minds of the affected sectors. The scam happened when tax credit certificates granted to a particular industry was sold at a discount to other entities other than its original holder. Furthermore, there were delays in the redemption of such tax credit certificates.

If all imports used by the freeports as raw materials in producing an export product would pay taxes and duties, the government would be compelled to issue tax credit certificates again to the freeports because all exports are tax and duty free.

Fortunately or unfortunately, depending on one’s point of view, the tax credit scam may used to plug the loopholes in the process. A government fund may be set aside for timely redemption of the tax credit certificates. Likewise, the transferability of such certificates may be deleted.

As far as the objection that cost of export products would increase due to the increase in financing cost may be studied. After all, freeports are granted fiscal incentives that would compensate such increase in financing cost.

In case all imports would be required to pay taxes and duties, it would only be the BOC who would have primary jurisdiction over freezones. Otherwise, the present regime of doing things will continue, the overlap of jurisdiction between the freezones and the BOC.





## I. Introduction. –

The 1987 Philippine Constitution provides:

### ARTICLE XII NATIONAL ECONOMY AND PATRIMONY

*“Section 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the under-privileged.*

*“The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.*

*“In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.”*

“Sec. 10. The Congress shall, upon recommendation of the economic and planning agency, when national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

“In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.”

“The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.” (Emphasis provided)

Section 1 above is explained<sup>1</sup>:

“The protection guaranteed is not against foreign competition but unfair foreign competition and unfair foreign trade practices. The constitutional policy is to protect both Filipino producers and consumers and not to protect the former from foreign competition at the expense of the latter. X x x.

“The government may grant protection through high tariffs or even import controls to young and growing Filipino industries to shield them from undue foreign competition in their infant stages. But protection is not intended as a permanent support for ‘non-infant’ enterprises. Absolute protection creates an economy of inefficient industries producing poor quality products exorbitantly priced, the high-cost of which is borne by the people, simply because they are not subject to sufficient competition. X x x.

“On the other hand, tariffs, quotas, if not total ban on imports, and other barriers to trade (e.g., quarantine regulations for agricultural products and standard regulations for industrial products) may be a feature of the trade policy of other nations, or multi-national corporations doing business in the Philippines may resort to unfair trade practices (e.g., dumping of excess products, excessive charging of royalties, denial of access to technology, etc) which are injurious to local industries. In such case, the government must take measures to protect local industries.

“The Philippine government has the exclusive right to define what shall constitute unfair foreign competition or trade practices justifying protection of Filipino enterprises.” (Underscoring supplied)

The “Filipino-First Policy” found under Section 10 was construed this way:

“The second paragraph commands the state to give preference to qualified Filipinos in the grant of rights and privileges - and this, provided that the Filipino is ‘qualified,’ even if a foreigner is ‘more qualified.’”<sup>2</sup>

In the case of *Manila Prince Hotel vs. GSIS*<sup>3</sup>, the Malaysian bidder propounded that the subject provision of the 1987 Constitution is not self-executory. The Supreme Court (SC) however held that the same was “x x x a mandatory, positive command which is complete in itself and which needs no further guidelines or implementing laws or rules for its enforcement.”

It was further echoed that:

“When, however, the General Agreement on Tariffs and Trade was challenged x x x as an unconstitutional treaty for placing foreign investors on the same level as Filipinos, the Court attempted to distinguish the two cases saying that the provision was mandatory and enforceable ‘only in regard to the grant of rights, privileges and concessions covering national economy and patrimony’ and not to every aspect of trade and commerce. X x x. The issue here is not whether this paragraph x x x is self-executing or not. X x x, the issue is whether, as a rule, there are enough balancing provisions in the Constitution to allow the Senate to ratify the Philippine concurrence in the WTO Agreement. And we hold that there are.” (Infra)

The World Bank Group in the Philippines in its *Philippine Economic Update (Accelerating Reforms to Sustain Growth, December 2012)*, made the following comments in relation to the import-export situation in our country:

**“Weak growth in merchandise imports helped constrain the trade deficit in 3Q.** In USD terms, merchandise imports grew by 3.6 percent y-o-y in September and by 0.5 percent on a year to date basis. Combined with robust growth in exports, this has helped constrain the trade deficit to USD 5.9 billion in the year to September (compared to USD 8.2 billion a year ago). Weakness in import growth mainly

<sup>1</sup> De Leon, Hector S.: *Philippine Constitutional Law, Principles and Cases*, pp. 885-886.

<sup>2</sup> Bernas, Joaquin G.: *The 1987 Constitution of the Philippines: A Commentary*, pp. 1217-1218.

<sup>3</sup> GR No. 122156, February 3, 1997.

reflects negative base effects arising from a sharp expansion in imports last year and weak demand for inputs used by the semiconductor and electronics industry. Imports of capital goods, however, increased by 13.7 percent y-o-y through September, with industrial machinery and equipment rising by 10 percent. Growth in consumer goods imports remained strong, growing by an average of 6.1 percent through September, reflecting the strength of private domestic demand in the Philippines.”

The report likewise acknowledged that “The country’s external position remained healthy, helped by a **rebound in merchandise exports** and robust remittances.” (Emphasis provided)



## II. The Tariff and Customs Code, as amended. -

Under the Tariff and Customs Code of the Philippines (TCCP), as amended, special import duties are imposed, in addition to the ordinary import duties. As observed, “generally, the purpose of the imposition of the special duties is to protect local industries against unfair competition from foreign manufacturers<sup>4</sup>” and to raise revenue for the government.

In the Philippines, several provisions can be found under the TCCP, as amended, to serve such purpose. They are detailed under Sections 301 (Dumping Duty), 302 (Countervailing Duty), 303 (Marking Duty) and 304 (Discriminatory Duty). The complete provisions are hereby cited for a better understanding:

**“Sec. 301. Dumping Duty.** —

a. Whenever the Secretary of Finance (hereinafter called the “Secretary”) has reason to believe, from invoices or other papers or from information made available to him by any government agency or interested party, that a specific kind or class of foreign article, whether dutiable or duty-free, is being sold or is likely to be sold for exportation to, or in, the Philippines, at a price less than its fair value, as hereinafter

defined, the importation or sale of which might injure, or prevent the establishment of, or is likely to injure an industry in the Philippines, he shall so advise the Tariff Commission (hereinafter called the “Commission”).

“b. The Commission, upon receipt of such advice from the Secretary, shall conduct an investigation to —

- “1. Verify if the kind or class of articles in question is being sold or is likely to be sold for exportation to, or in, the Philippines at a price less than its fair value;
- “2. Determine if, as a result thereof, an industry in the Philippines is being injured or is likely to be injured or is prevented from being established by reason of the importation or sale of such kind or class of article into the Philippines; and
- “3. Ascertain the difference, if any, between the purchase price or, in the absence thereof, the exporter’s sales price, and the fair value of the article. The Commission shall submit its findings to the Secretary within one month after receipt of the aforesaid advice.

“c. The Secretary shall, within fifteen days from the report of the Commission, decide whether the article in question is being imported in violation of this section and shall give due notice of such finding and shall direct the Commissioner of Customs to cause the dumping duty, to be levied, collected and paid, as prescribed in this section, in addition to any other duties, taxes and charges imposed by law on such article.

“d. The “dumping duty” as provided for in subsection “e” hereof shall be equal to the difference between the purchase price or, in the absence thereof, the exporter’s sales price, and the fair value of the article.

“e. For the purpose of this section —

“1. The “fair value” of an article shall be its foreign market value, or, in the absence of such value, its cost of production.

“2. The “purchase price” of an imported article shall be the price at which such article has been

<sup>4</sup> Umali, Roman M.: *Reviewer in Taxation*, p. 525.

*purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the article is imported, plus, when not included in such price —*

*“(a) The cost of all containers and coverings and all other costs, charges and expenses incident to placing the article in condition, packed ready for shipment to the Philippines;*

*“(b) The amount of any export tax paid in the country of exportation on the exportation of the article to the Philippines;*

*“(c) The amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the article to the Philippines; and*

*“(d) The amount of any taxes imposed in the country of exportation upon the manufacturer, producer or seller, in respect to the manufacture, production or sale of the article, which have been rebated, or which have not been collected, be reason of the exportation of the article of the Philippines.*

*“Any additional costs, charges and expenses incident to bringing the article from the place of shipment in the country of exportation to the place of delivery in the Philippines and Philippine customs duties imposed thereon shall not be included.*

*“3. The "exporter's sale price" of an imported article shall be the price at which such article is sold or agreed to be sold in the Philippines, before or after the time of exportation, by or for the account of the exporter, including*

*“(a) The cost of all containers and coverings and all other costs, charges and expenses incident to placing the article in condition, packed ready for shipment to the Philippines;*

*“(b) The amount of any import duties imposed by the country of exportation which have been*

*rebated, or which have not been collected, by reason of the exportation of the article to the Philippines; and*

*“(c) The amount of any taxes imposed in the country of exportation upon the manufacturer, producer or seller in respect to the manufacture, production or sale of the article, which have been rebated, or which have not been collected, by reason of its exportation to the Philippines. The following amount, if included, shall be deducted —*

*“(1) The amount of costs, charges and expenses, and Philippine customs duties, incident to bringing the article from the place of shipment in the country of exportation to the place of delivery in the Philippines;*

*“(2) The amount of commissions, if any, for selling in the Philippines the particular article under consideration;*

*“(3) An amount equal to the expenses, if any, generally incurred by or for the account of the exporter in the Philippines in selling identical or substantially identical article; and*

*“(4) The amount of any export tax paid in the country of exportation on the exportation of the article to the Philippines*

*. “4. The "foreign market value" of an imported article shall be the price, at the time of exportation of such article to the Philippines, at which such or similar article is sold or freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not sold or offered for sale for home consumption, then for exportation to countries other than the Philippines), including the cost of all containers and coverings and all other costs, charges and expenses incident to placing the article in condition packed ready for shipment to the Philippines, except that in the case of articles purchased or agreed to be purchased by the person by whom or*

for whose account the article is imported, prior to the time of exportation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purpose of this section, no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

"5. The "cost of production" of an imported article shall be the sum of —

"(a) The cost of materials of, and of fabrication, manipulation or other process employed in manufacturing or producing, identical or substantially identical article, at a time preceding the date of shipment of the particular article under consideration which would ordinarily permit the manufacture or production of the particular article under consideration in the usual course of business;

"(b) The usual general expenses not less than 10 per cent of such cost, in the case of identical or substantially identical articles;

"(c) The cost of all containers and coverings, and all other costs, charges and expenses incident to placing the particular article under consideration in condition, packed ready for shipment to the Philippines; and

"(d) An addition for profit not less than 8 per cent of the sum of the amounts determined under subparagraphs (a) and (b) hereof, equal to the profit which is originally added, in the case of articles of the same general character as the particular article under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the same general trade as the manufacturer or producer of the particular article under consideration.

"f. For the purposes of this section the "exporter" of an imported article shall be the person by whom or for whose account the article is imported into the Philippines —

"1. If such person is the agent or principal of the exporter, manufacturer or producer; or

"2. If such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer or producer; or

"3. If the exporter, manufacturer or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such persons; or

"4. If any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 per cent or more of the voting power or control in the business carried on by the person by whom or for whose account the article is imported into the Philippines, and also 20 per cent or more of such power or control in the business of the exporter, manufacturer or producer.

"g. Pending investigation and final decision of the case, the article in question, and articles of the same specific kind or class subsequently imported under similar circumstances, shall be released to the owner, importer, consignee or agent upon the giving of a bond in an amount equal to the double the estimated value thereof. Articles which may have been delivered under the provision of section fifteen hundred and three of this Code prior to the institution of the investigation provided in this section shall, pending final decision, be ordered returned to the custody of the collectors of customs unless released under bond in accordance with this section.

"h. Any aggrieved party may only appeal the amount of dumping duty that is levied and collected by the Commissioner of Customs to the Court of Tax Appeals in the same manner and within the same period provided for by law in the case of appeals from decisions of the Commissioner of Customs.

"i. (1) The article, if it has not been previously released under bond as provided in subsection "g" hereof, shall be released after payment by the party concerned of the corresponding dumping duty in addition to any other duties, taxes and charges, if any, or re-exported by the owner, importer, consignee or agent, at his option and expense,

upon the filing of a bond in an amount equal to double the estimated value of the article, conditioned upon the presentation of a landing certificate issued by a consular officer of the Philippines at the country of destination; or

“(2) If the article has been previously released under bond, as provided in subsection “g” hereof, the party concerned shall be required to pay the corresponding dumping done in addition to any other duties, taxes and charges, if any.

“j. Any investigation to be conducted by the Commission under this section shall include a hearing or hearings where the owner, importer, consignee or agent of the imported article, the local producers of a like article, other parties directly affected, and such other parties as in the judgment of the Commission are entitled to appear, shall be given an opportunity to be heard and to present evidence bearing on the subject matter.

“k. It shall be the duty of collectors of customs at all ports of entry to levy and collect the dumping duty in accordance with subsection “d” hereof on the specific kind or class of article as to which the Secretary has made a decision of dumping.

“It shall also be their duty to bring to the attention of the Secretary, thru the Commissioner of Customs, any case coming within their notice which may, in their opinion, require action as provided in this section.

“l. The Secretary shall promulgate all rules and regulations necessary to carry out the provisions of this section.

“Sec. 302. Countervailing Duty. — a. On articles dutiable under this Code, upon the production, manufacture or export of which any bounty, subsidy or subvention is directly or indirectly granted in the country of origin and/or exportation, and the importation of which has been determined by the Secretary, after investigation and report of the Commission, as likely to materially injure an established industry, or prevent or considerably retard the establishment of an industry in the Philippines, there shall be levied a countervailing duty equal to the ascertained or estimated amount of such bounty, subsidy or subvention: Provided, That the exception of any exported article from a duty or tax imposed on like articles when destined for consumption in the country of origin and/or exportation or the refunding of such duty or tax, shall not be deemed to constitute a grant of a bounty, subsidy or subvention within the meaning of

this section; however, should an article be allowed drawback by the country of origin and/or exportation, only the ascertained or estimated excess of the amount of the drawback over the total amount of the duties and/or internal taxes, if any, shall constitute a bounty, subsidy or subvention.

“b. The Commission, on its own motion or upon application of any interested party, when in its judgment there is good and sufficient reason therefor, shall ascertain, determine or estimate the net amount of such bounty, subsidy or subvention and shall transmit to the Secretary the amounts so ascertained, determined or estimated, if any. Wherever it is ascertained that the conditions which necessitated the imposition of the countervailing duty have ceased to exist, and the Commission shall so certify to the Secretary, the latter shall take the necessary steps to suspend or discontinue the imposition of such duty.

“c. The Secretary shall make all rules and regulations necessary to carry out the provisions of this section.

“Sec. 303. Marking of Imported Articles and Containers. — a. Marking of Articles. — Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection “b” hereof) imported into the Philippines shall be marked in any official language of the Philippines and in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the Philippines the name of the country of origin of the article. The Commissioner of Customs shall, with the approval of the department head, issue rules and regulations to —

“(1) Determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stenciling, stamping, branding, labeling or by any other reasonable method, and a conspicuous place on the article or container where the marking shall appear;

“(2) Require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin of any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser; and

“(3) Authorize the exception of any article from the requirements of marking if —

“(a) Such article is incapable of being marked;

“(b) Such article cannot be marked prior to shipment to the Philippines without injury;

“(c) Such article cannot be marked prior to shipment to the Philippines, except at an expense economically prohibitive of its importation; (d) The marking of a container of such article will reasonably indicate the origin of such article;

“(e) Such article is a crude substance;

“(f) Such article is imported for use by the importer and not intended for sale in its imported or any other form;

“(g) Such article is to be processed in the Philippines by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed or permanently concealed;

“(h) An ultimate purchaser, by reason of the character of such article or by reason of the circumstance of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;

“(i) Such article was produced more than twenty years prior to its importation into the Philippines; or

“(j) Such article cannot be marked after importation except at an expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller or shipper to avoid compliance with this section.

“b. Marking of Containers. — Whenever an article is excepted under subdivision (3) of subsection “a” of this section from the requirements of marking, the immediate container, if any, of such article, or such other container or containers of such article as may be prescribed by the Commissioner of Customs with the approval of the department head, shall be marked in such manner as to indicate to an ultimate purchaser in the Philippines the name of the country of origin of such article in any official language of the Philippines, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection “a”.

“c. Marking Duty for Failure to Mark. — If at the time of importation any article (or its container, as provided in subsection “b” hereof), is not marked in accordance with the requirements of this section, there shall be levied, collected and paid upon such article a marking duty of 5 per cent ad valorem, which shall be deemed to have accrued at the time of importation, except when such article is exported or destroyed under customs supervision and prior to the final liquidation of the corresponding entry.

“d. Delivery Withheld until Marked. — No imported article held in customs custody for inspection, examination or appraisal shall be delivered until such articles and/or their containers, whether released or not from customs custody, shall have been marked in accordance with the requirements of this section and until the amount of duty estimated to be payable under subsection “c” of this section shall have been deposited. Nothing in this section shall be construed as excepting any article or its container from the particular requirements of marking provided for in any provisions of law.

“e. The failure or refusal of the owner or importer to mark the articles as herein required within a period of thirty days after due notice shall constitute as an act of abandonment of said articles and their disposition shall be governed by the provisions of this Code relative to abandonment of imported articles.

“Sec. 304. Discrimination by Foreign Countries. — a. The President, when he finds that the public interest will be served thereby, shall by proclamation specify and declare new or additional duties in an amount not exceeding 50 per cent of the existing rates as hereinafter provided upon articles wholly or in part the growth or product of, or imported in a vessel of, any foreign country whenever he shall find as a fact that such country —

“(1) Imposes, directly or indirectly, upon the disposition in, or transportation in transit through or re-exportation from such country of any article wholly or in part the growth or product of the Philippines any unreasonable charge, exaction, regulation or limitation which is not equally enforced upon the like articles of every foreign country; or

“(2) Discriminates in fact against the commerce of the Philippines, directly or indirectly, by law or administrative regulation or practice, by or in respect to any customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction or prohibition, in such manner as to place the commerce of the Philippines at a disadvantage compared with the commerce of any foreign country.

“b. If at any time the President shall find it to be a fact that any foreign country has not only discriminated against the commerce of the Philippines, as aforesaid but has, after the issuance of a proclamation as authorized in subsection “a” of this section, maintained or increased its said discriminations against the commerce of the Philippines, the President is hereby authorized, if he deems it consistent with the interests of the Philippines, to issue a further proclamation directing that such product of said country or such articles imported in its vessels as he shall deem consistent with the public interests, shall be excluded from importation into the Philippines.

“c. Any proclamation issued by the President under the authority of this section shall, if he deems it consistent with the interests of the Philippines, extend to the whole of any foreign country or may be confined to any subdivision or subdivisions thereof; and the President shall, whenever he deems the public interests require, suspend, revoke, supplement or amend any such proclamation.

“d. All articles imported contrary to the provisions of this section shall be forfeited to the Government of the Philippines and shall be liable to be seized, prosecuted and condemned in like manner and under the same regulations, restrictions and provisions as may from time to time be established for the recovery, collection, distribution and remission of forfeiture to the government by the tariff and customs laws. Whenever the provision of this section shall be applicable to importations into the Philippines of articles wholly or in part the growth or product of any foreign country, they shall be applicable thereto whether such articles are imported directly or indirectly.

“e. It shall be the duty of the Commission to ascertain and at all times to be informed whether any of the discriminations against the commerce of the Philippines enumerated in subsections “a” and “b” of this section are practiced by any country; and if and when such discriminatory acts are disclosed, it shall be the duty of the Commission to bring the matter to the attention of the President, together with recommendation.

“f. The Secretary shall make such rules and regulations as are necessary for the execution of such proclamation as the President may issue in accordance with the provisions of this section.

“g. The authority granted herein to the President shall be exercised only when Congress is not in session.”

Dumping Duty. - Dumping alludes to the practice of selling of goods or articles in another market at low prices for the purpose of getting rid of surpluses and/ or illegally competing with other players. Under the TCC, as amended, dumping refers to the “X x x deliberate and continuous sale of articles by a producer or manufacturer in an exporting country to a local purchaser at prices lower than those charged to purchasers in the exporting country or to dispose of a surplus in the exporting country, with resulting injury or likelihood of injury to local industries” (Umali, Roman M: Reviewer in Taxation, p. 526).

Countervailing Duty. - “Countervailing duty is a duty or surtax imposed on imports to offset an excise or inland revenue tax upon articles of the same class manufactured at home; also, a duty imposed to offset

the advantage to foreign producers by a bounty which their government offers for the production or export of articles taxed.” The one imposed under the TCC, as amended, is of the second type. (Supra, p. 531-532)

Marking Duty. - “It is an additional duty imposed for violation of the law requiring marking of imported articles and their containers. The purpose is to prevent deception of consumers.” (Supra, p. 533)

Discriminatory Duty. - As the term implies, a discriminatory duty is imposed to protect local industries from unfair practices of foreign competition which discriminates trade of the Philippines. Under the TCC, as amended, it may be defined as “X x x a special duty authorized to be imposed, in addition to the regular duties, by the President of the Philippines on goods coming from a foreign country which discriminates against the commerce of the Philippines or against goods coming from the Philippines and shipped to such foreign country.” (Supra, p. 534)

The pertinence of the above provisos is made more apparent with the advent of the World Trade Organization (WTO), wherein the Philippines is a signatory/member country. Disputes under the WTO, such as violation of General Agreement on Tariff and Trade (GATT) provisions, is settled using the legal framework therein institutionalized. Of course, the protection of a country’s local industry is of paramount concern to it. Non-compliance with decisions in dispute settlement resolutions (DSR) of the WTO could engender retaliatory measures from the party/ies concerned. The actions usually involve request for compensation or the suspension of trade benefits afforded by the alleged injured party. Such moves however are often temporary in nature because full implementation is preferred.

Furthermore, it cannot be denied that present trading practices are complex and as a consequence, the participation and contribution of several sectors are imperative. Of late, several cases involving alleged violations of trade laws and practices have been filed and are pending before the disputes resolution body of the WTO. Of course, in the final analysis, what is of vital issue is the maintenance of unobstructed trade between and among partner nations. Conflicts and misunderstandings would always exist, considering the proclivity of countries to protect local industries. These cannot be avoided. What is likewise important is the early settlement of such contentious issues, so as not to hinder economic activities.



## STAFF DEVELOPMENT AND OTHER ACTIVITIES



**Title : Seminar on Climate Change and Green Low-Carbon Development**  
**Date : July 16 - August 5, 2013**  
**Place: Beijing, China**  
**Participants : Dir. Maria Lucrecia R. Mir**  
**Dir. Julieta M. Fontiveros**



### STSTRO LECTURE SERIES

The STSTRO commenced the Lecture Series on August. Shown here are Dir. Bong Villanueva who talked about "How a Bill Becomes a Law", and Director General Atty. Rodelio T. Dascil on "Basic Presentation on Legislation that Pertains to Taxation". The class is composed of Senator Sonny Angara's Staff and STSTRO Staff.



**STSTRO CORNER**

**STAFF DEVELOPMENT AND OTHER ACTIVITIES**

**Title :** Gender Sensitivity Training  
**Date :** July 17 & 18, 2013  
**Place :** Sunrise Holiday Mansion, Alfonso, Cavite  
**Participants :** Clinton S. Martinez  
 Johann Gueverra

**Title :** Supervisory Development Course Track 1 (SDC T-1)  
**Date :** August 13 & 14, 2013  
**Place :** Senate of the Philippines  
**Participants :** Johann F.A. Guevarra  
 Dir. Sheanne C. Salazar



**TAX BITS** is an official publication of the Senate Tax Study and Research Office (STSTRO) located at Rm. 524, Senate of the Philippines, Financial Center, Pasay City.  
 Website: <http://www.senate.gov.ph>  
 Email: [attydascil@yahoo.com](mailto:attydascil@yahoo.com), [taxbits@yahoo.com](mailto:taxbits@yahoo.com)  
 Telefax No.: 552-6850 ; Local 5506, 5508

**Editors and Contributing Writers**

**Atty. RODELIO T. DASCIL, MNSA**  
 Director General

**Atty. EMMANUEL M. ALONZO**  
 Director III, Legal & Tariff

**RECHILDA B. GASCON, MNSA**  
 Director III, Tax Policy & Admin

**MARIA LUCRECIA R. MIR, MNSA**  
 Director III, Direct Taxes

**VIVIAN A. CABILING**  
 Director III, Indirect Taxes

**JULIETA M. FONTIVEROS**  
 Director II, Legal & Tariff

**NORBERTO M. VILLANUEVA**  
 Director II, Tax Policy & Admin

**ELVIRA P. CRUDO**  
 Director II, Direct Taxes

**Atty. SHERRY ANNE C. SALAZAR**  
 Director II, Indirect Taxes

**BONIFACIO R. JOSON**  
 LSA-III, ODG - Layout Artist

**CLINTON S. MARTINEZ**  
 SLSO II, Indirect Taxes

The Articles were principally prepared by the authors, under the supervision of STSTRO Directors and the overall guidance of its Director-General.  
 The views and opinions expressed are those of STSTRO and do not necessarily reflect those of the Senate, its leadership, or its individual members.  
 For comments and suggestions, please email us at [attydascil@yahoo.com](mailto:attydascil@yahoo.com), or [ststro1989@gmail.com](mailto:ststro1989@gmail.com).