ECCP ADVOCACY PAPERS 2021

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EUROPEAN CHAMBER OF COMMERCE OF THE PHILIPPINES

CUSTOMS ADVOCACY PAPER 2021

ABOUT ECCP

The **European Chamber of Commerce of the Philippines** (ECCP) is a service-oriented organization whose main goal is to foster close economic ties and business relations between the Philippines and Europe. The ECCP does this by providing a wide range of consultancy services and by creating linkages between companies, organizations, and individuals with existing or potential business interests in Europe and the Philippines. It is also at the forefront of pro-business, pro-growth advocacy in the Philippines, representing European business interests for increased market access and trade facilitation, at the highest level of Philippine political discussions.

The ECCP sees itself as the stepping stone for Europeans into the Philippine market and for Filipinos into the European market.

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Positions expressed in the advocacy papers are the result of the activities of the Sector Committees working under the ECCP.

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We would also like to acknowledge the support of our committee members.

METHODOLOGY

The 2021 edition of the ECCP Advocacy Papers features issues and recommendations formed after extensive discussions between members of the ECCP sector committees, dialogues and meetings with representatives from the Philippine Government, and other stakeholders. The ECCP has also taken into consideration the information gathered from organizing different events, participating in numerous hearings and committee meetings in both chambers of the Philippine Congress, as well as in private sector consultations held by several government agencies.

Further, the recommendations provided in each paper were primarily based on the discussions during the quarterly sector committee meetings. In close cooperation with the sector committee leaders and members, the ECCP Advocacy Team thoroughly analyzed every issue and advocacy recommendation to ensure that they are in line with European business interests and priorities. Once the Advocacy Team has finalized the first draft of each sector paper, it was then circulated to the Committee members and other stakeholders for consultation and subsequently, gathered inputs to be included in the final draft of the papers.

The assessment of the status of each recommendation included in *2019* Advocacy Papers were examined under the following criteria:

Completed/Substantial Progress: Recommended action has either been completed or there has been significant progress towards the realization of the recommendation.

Some Progress: Movement towards realizing the recommendation has been made, but substantial work still needs to be done to fully achieve and complete the proposed measure.

No Progress/Retrogression: Minimal progress or no movement towards attaining the recommended reforms were done, or the status of the issue has worsened and has evolved to an even bigger bottleneck for European businesses.

MESSAGE FROM THE ECCP PRESIDENT

On behalf of the European Chamber of Commerce of the Philippines (ECCP), I am pleased to present the 2021 ECCP Advocacy Papers. This year's edition features an overview of the current business regulatory landscape in the Philippines as well as industry-specific challenges of the 22 sector committees of the Chamber. More importantly, the paper puts forward constructive policy recommendations for strengthening European-Philippine economic relations and opening up a new decade of growth opportunities as the theme of this year's Summit suggests.

Indeed, the past year has been a period unlike any other with the ongoing health crisis testing the resilience of most organizations and redefining the way we do business. Our advocacy work has also stepped up in organizing virtual discussions and actively engaging key stakeholders including policymakers to raise awareness on issues that matter the most to our members as well as push for reforms that will support our community during this period of uncertainty.

Understandably, the past 20 months have seen a shift of policy priorities from the Philippine government by focusing more on pandemic response and providing social safety nets to the affected and vulnerable. Nevertheless, we have witnessed promising developments on the economic front that will help restore business confidence and boost the country's position as a competitive destination for trade and investments including those from Europe. Among these include the signing of the landmark Corporate Recovery and Tax Incentives for Enterprises Act, the Financial Institutions Strategic Transfer Act, and the inking of the world's largest trade bloc known as the Regional Comprehensive Economic Partnership, of which the Philippines is a party. In addition, the Philippines' improved ranking of 90th in 2020 from 124th in 2019 of the World Bank's Doing Business report demonstrates the global community's relative trust in the country's business environment.

We at the Chamber strive to make the most of these exciting developments in the years to come. The 2021 ECCP Advocacy Papers is our contribution to addressing some of the remaining challenges to helpfully realize the potential of our bilateral ties and economic prospects. I would like to thank our Committee leaders, member companies, and the team behind our flagship publication. Moreover, the European business community continues to stand at the forefront of these crucial issues, which when addressed, will further support our shared goals towards inclusive and sustainable recovery. As such, we remain committed to working with the Philippines in navigating this new decade of growth opportunities.

Mr. Lars Wittig
ECCP President

MESSAGE FROM THE EU AMBASSADOR

I congratulate the European Chamber of Commerce of the Philippines (ECCP) for the 2021 edition of their Advocacy Papers.

These papers offer useful food for thought and action at a crucial time.

At present, the global economy is poised to show its most robust post-recession recovery. In the EU, recovery is underway following a massive vaccination campaign and an ambitious recovery plan decided collectively by EU leaders in 2020. In the EU, today, more than 70% of adults are vaccinated, resulting in improved business and consumer confidence.

Vaccination is the way to pull through collectively from a health crisis of this proportion. It should not stop there. At present, the EU is first and most urgent priority is to speed up global vaccination to ensure that access to vaccines becomes equitable worldwide.

While the European Union has focused on tempering the spread of the virus and its impact on lives and the economy, the EU has remained crucial in the global effort to strengthen the multilateral trading system, fight protectionism and ensure that global trade remains unhampered.

This strategy has reaped fruits. It is anticipated that 19 EU Member States will revert to pre-pandemic growth levels in 2021 and the remainder will follow in 2022. In the last quarter, growth in the Euro area outpaced both the US and China.

Next Generation EU and the seven years multi-annual budget will invest in both short-term recovery and long-term prosperity. It will support innovative policies and will set Europe on a path to a sustainable resilient recovery. One-third of this €1800 billion budget will finance the European Green Deal, which will be the EU's lifeline out of the COVID 19 crisis. This Green Deal will transform the EU into a modern, resource-efficient competitive economy.

The EU and the Philippines have established a relationship characterized by a shared goal of peace and prosperity for our peoples. In terms of commercial relations, we have seen steady growth in the bilateral trade in goods between the EU and the Philippines over the last years. However, EU-PH trade today is far from its full potential. Likewise, the Philippines needs to attract a greater portion of EU investments in ASEAN.

Let us continue to work together to achieve a sustainable and resilient recovery for our economies. I welcome these advocacy papers as a useful contribution in our pursuit of creating a level playing field and opportunities for industries and sectors to be able to participate; provide more choices to our consumers, and promote a sustainable approach to trade.

H.E. Luc Véron
Ambassador
Delegation of the European Union to the Philippines

MESSAGE FROM THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES

My warmest greetings to the **European Chamber of Commerce of the Philippines (ECCP)** as it organizes the **2021 European-Philippine Business Summit**.

This event is an opportune time to explore and pursue various programs and strategies that will enable the business community to overcome the adverse effects of the COVID-19 pandemic on our economy.

The government is one with you in this goal as it has shown in its commitment to advance free trade and to restore confidence in the Philippine economy through our landmark Tax Reform Law and the ratification of the Regional Comprehensive Economic Partnership, of which the Philippines is a party.

I hope that you will remain steadfast in promoting and attracting trade and investments to the country, especially from Europe. Together, let us revitalize our industries and boost our productivity under the new normal.

May you have a successful summit.

Rodrigo Roa Duterte
President of The Republic of the Philippines

MESSAGE FROM THE DEPARTMENT OF TRADE AND INDUSTRY

The presence of the European Chamber of Commerce in the Philippines (ECCP) in the country is a testament to the relationship between our economies evident in the current levels of trade and investments. In 2020, Europe ranked as the Philippines' 5th trading partner, with total bilateral trade amounting to US$13.06 billion. And as we secure the collective development of both our nations, the Department of Trade and Industry (DTI) continues to rely on the steadfast efforts of ECCP in facilitating market access and in creating a level playing field for both European and Filipino companies

Together with the holding of the **2021 European-Philippine Business Summit (EPBS),** the launch of the **2021 ECCP Advocacy Papers** not only reflects the continued partnership of both nations that has flourished and strengthened throughout the years, but is also the fruit of the hard work and commitment of the men and women behind the successes of your organization.

Despite the challenges of the pandemic, the Philippines remains a conducive place to do business and is still considered an emerging economy for investment. This can be attributed to our strong economic fundamentals and is a result of landmark policies and programs of the Duterte administration to create an enabling business environment in the country.

Among these initiatives is the consistent pursuit of game-changing reforms such as the **Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act** and the **Financial Institutions Strategic Transfer (FIST) Act,** which are expected to bring in more investments and ensure the stability of our financial system to accelerate the country's quick and sustainable economic recovery. The Philippines is also part of the **Regional Comprehensive Economic Partnership (RCEP) Agreement,** which is intended to strengthen regional economic integration and increase economic resiliency through enhancing market access for goods, services, and investment. All of these, together with the review of other economic restrictions, have the common goal of attracting more investments that will create more jobs in the country.

As the Philippine economic situation continues to improve, this year's theme, **Amidst theCrisis: A New Decade of Growth Opportunities,** sets the tone for our continued partnership. We are counting on the private sector to harness the potential of our revitalization as we embark on pursuits that will ensure the inclusive and sustainable development of our nations. Ultimately, our goal is to make your investments in the country as profitable as possible, which will secure the development of our economies, provide better opportunities for employment, and empower our citizens to become productive members of society as we take on the greater effort of nation-building to create a better quality of life for all Filipinos.

Congratulations and *mabuhay po kayo!*

Hon. Ramon Lopez
Secretary
Department of Trade And Industry

MESSAGE FROM THE HOUSE OF REPRESENTATIVES

Our warmest felicitations to the European Chamber of Commerce of the Philippines, ECCP President Lars Wittig, ECCP Vice Presidents Amal Makhloufi and Kavita Hans, distinguished officers and members, on the launching of the 2021 edition of ECCP Advocacy Papers.

They say that the darkest nights produce the brightest stars. We convene today at a time of great uncertainty brought about by a global pandemic. As Speaker of the House of Representatives of the Philippines, I would like to express my deep appreciation to the European Chamber of Commerce in the Philippines and the ECCP Advocacy Committees in producing the 2021 ECCP Advocacy Papers, covering the most significant areas in development policy, from agriculture, the environment and water, to education, health care, and human capital, and of recent import, defense and disaster response, and renewable and energy efficiency. These papers are vital inputs to policy formulation, can serve to enhance Philippine development road maps, and be our springboard for continued discussion and engagement between the ECCP and our government in forging sustainable means of collaboration.

On the part of the House of Representatives, we intend to move towards a more resilient, more inclusive, and more sustainable post-pandemic economy with reforms which seek the following: one, to liberalize foreign investments into the country; two, to promote greater competition in key industries; three, to enhance governance in key infrastructure agencies; and four, to remove restrictions on foreign equity, thereby making economic policies more attuned to the realities in both local and international landscapes.

The opportunity to build a better economy is before us and should indeed, be seized. Through cooperation and collaboration, let us together bring into fulfillment a decade of renewal and growth.

Thank you.

Lord Allan Jay Q. Velasco
House Speaker District Representative Marinduque

WHERE ARE WE NOW?

THE PHILIPPINES

The Philippines prides itself in its dynamic and robust economy, transforming into one of the region's top economic performers and attracting companies to invest and expand their operations. In the last decade, the country was able to sustain an average annual growth of 6.4% between 2010-2019 from an average of 4.5% between 2000-2009.[1] Among its neighboring countries in the Association of Southeast Asian Nations (ASEAN), the Philippines was ranked 4th in terms of Gross Domestic Product (GDP) growth rate with 6.1% in 2019 (Table 1).

Table 1. ASEAN GDP Year-on-Year Growth Rates, 2019 and 2020 (% per year)

Country	2019	2019 ranking	2020	2020 ranking
Brunei Darussalam	3.9	8th	1.2	3rd
Cambodia	7.1	1st	-3.1	6th
Indonesia	5.0	5th	-2.1	5th
Lao People's Dem. Rep.	4.7	6th	-0.5	4th
Malaysia	4.3	7th	-5.6	8th
Myanmar	6.8	3rd	3.3	1st
Philippines	**6.1**	**4th**	**-9.6**	**10th**
Singapore	1.3	10th	-5.4	7th
Thailand	2.3	9th	-6.1	9th
Vietnam	7.0	2nd	2.9	2nd

Asian Development Bank. *Asian Development Outlook 2021*[2]

However, the onset of the unprecedented COVID-19 pandemic has resulted in a drastic decline of economic activity around the world. In the Philippines, like in many other countries, the government had to implement huge fiscal support programs and impose strict quarantine measures to mitigate the spread of the virus, which in return restricted economic activity. Specifically in the Philippines, the recessionary impacts of the pandemic contracted the GDP growth rate by 9.6% for the year 2020 (Table 1). The Philippine Statistics Authority (PSA), which has been collecting annual data since 1947, records this decline as the first annual contraction since the Asian Financial Crisis seen in 1998. It also surpassed the prior record of 7.0% contraction in 1984.[3]

The annual preliminary figures from the PSA show that the unemployment rate rose to 10.3% in 2020, accounting for 4.5 million unemployed Filipinos in the labor force, which is significantly higher compared to the previous year's 5.1% rate. Likewise, the country's employment rate dropped from 94.9% in 2019 to 89.7% in 2020, with the Services sector accounting for 56.9% share, followed by the Agriculture sector with 24.8%, and the Industry sector with 18.3%.[4]

1 World Bank. (07 April 2021). Philippines: Overview. Retrieved from https://www.worldbank.org/en/country/philippines/overview

2 Asian Development Bank. (April 2021). Asian Development Outlook 2021. Retrieved from https://data.adb.org/dataset/gdp-growth-asia-and-pacific-asian-development-outlook

3 Nikkei Asia. (28 January 2021). Philippines GDP shrinks 9.5% in 2020, worst since 1947. Retrieved from https://asia.nikkei.com/Economy/Philippines-GDP-shrinks-9.5-in-2020-worst-since-1947

4 Philippine Statistics Authority. (08 March 2021). 2020 Annual Preliminary Estimates of Labor Force Survey. Retrieved from https://psa.gov.ph/content/2020-annual-preliminary-estimates-labor-force-survey-lfs

Currently, unemployment rate for July 2021 is estimated at 6.9%, the lowest recorded rate since in April 2020. The country also recorded a significant increase in terms of employment rate at 93.1% for the same month.[5]

On the other hand, headline inflation rose further to 3.5% in December 2020, from 3.3% in November 2020, primarily due to the increase in the inflation of heavily-weighted food and non-alcoholic beverages at 4.8% during the month. Additionally, annual increments were higher in terms of health (2.6%); transport (8.3%); and restaurant and miscellaneous goods and services (2.5%).[6] The Bangko Sentral ng Pilipinas (BSP) posted a slight increase in the average headline inflation for 2020 at 2.6%, but remained well within the government's target range of 2-4% for the year.[7] Subsequently, the PSA recorded a 4.9% headline inflation rate for August 2021, from 4.0% of the previous month, which is the highest inflation recorded since January 2019. The uptrend was mainly brought about by the higher annual increment in the index of the heavily-weighted food and non-alcoholic beverages at 6.5% during the month, from 4.9% in July 2021.[8]

In the 2021 World Competitiveness Ranking compiled by the Institute for Management Development (IMD), the Philippines ranked 52nd out of 64 countries, slipping down seven spots from the previous ranking. Specifically, the report noted the country's rankings dropping in three of the factors with Economic Performance falling 13 places to 57th; Government Efficiency slipping three spots to 45th; and Business Efficiency dropping from 33rd to 37th. Meanwhile, the Infrastructure category retained its ranking at 59th.[9]

In terms of the country's Foreign Direct Investments (FDI), the BSP officially recorded USD 6.5 billion net inflows for 2020, which is a 24.6% contraction from the USD 8.7 billion net inflows in 2019. The contraction was primarily driven by the fluctuation of supply chains and business outlooks that had affected investor decisions. Majority of the equity capital placement came from Japan, the Netherlands, United States of America (USA) and Singapore wherein these capital were channeled to manufacturing, real estate and the financial and insurance industries.[10]

On the other hand, total FDI net inflows from January to June 2021 registered at USD 4.3 billion. Specifically, the top source country is Singapore with USD 519.88 million, followed by Japan with USD 259.85 million and USA with USD 69.87 million. Investments were channeled mainly to manufacturing, financial and insurance, and electricity, gas, steam, and air-conditioning industries.[11]

5 Philippine Statistics Authority. (07 September 2021). Unemployment Rate in July 2021 is Estimated at 6.9 percent. Retrieved from https://psa.gov.ph/content/unemployment-rate-july-2021-estimated-69-percent

6 Philippine Statistics Authority. (05 January 2021). Summary Inflation Report Consumer Price Index (2012=100): December 2020. Retrieved from https://psa.gov.ph/statistics/survey/price/summary-inflation-report-consumer-price-index-2012100-december-2020

7 Bangko Sentral ng Pilipinas. (2020). BSP Inflation Rate Report. Retrieved from https://www.bsp.gov.ph/SitePages/MediaAndResearch/Inflation%20Report.aspx

8 Philippine Statistics Authority. (07 September 2021). Summary Inflation Report Consumer Price Index (2012=100): August 2021. Retrieved from https://psa.gov.ph/statistics/survey/price/summary-inflation-report-consumer-price-index-2012100-august-2021

9 IMD World Competitiveness Center. (2021). World Competitiveness Ranking. Retrieved from https://www.imd.org/centers/world-competitiveness-center/rankings/world-competitiveness/

10 Bangko Sentral ng Pilipinas. (10 March 2021). FDI Registers US$509 Million Net Inflows in December 2020; Full-Year Level Reaches US$6.5 Billion. Retrieved from https://iro.ph/articledetails.php?articleid=3547&catid=4

11 Bangko Sentral ng Pilipinas. (10 September 2021). FDI Net Inflows Up by 60.4 Percent YoY in June 2021; H1 2021 Level Reaches US$4.3

At the European level, FDI net inflows registered at USD 38.42 million with Germany accounting for USD 29.02 million, followed by the United Kingdom (USD 4.52 million), Sweden (USD 3.88 million), France (USD 1.99 million), and Luxembourg (USD 1.66 million).[12]

The total external trade of the country in terms of goods was recorded at USD 155.03 billion in the year 2020, which is lower by 15.1% compared to the USD 182.52 billion recorded during 2019. Among the major trading partners are the People's Republic of China, Japan, and the USA.[13] The European Union (EU) followed as the fourth largest trading partner, accounting for 8.4% of the country's total trade in 2020. Meanwhile, as for the Philippines' bilateral trade with the EU member countries, Germany ranked as the top trading partner.[14] Likewise, in 2019, Germany ranked as the highest trading partner with a total trade of USD 5.55 billion or 31.5 percent of EU's total trade, followed by the Netherlands, France, the United Kingdom, and Italy.[15]

Over the past years, the Philippines was able to maintain its credit ranking at 'BBB' with a stable outlook from various agencies. However, the recent negative outlook from Fitch reflects the increasing risks to the credit profile from the impact of the pandemic and its aftermath.[16] The table below shows the latest ratings from various agencies:

Table 2. Philippine Credit Ratings

Date	Agency	Rating
July 2020	Moody's	Baa2 Stable
May 2021	Standard & Poor	BBB Positive
July 2021	Fitch	BBB Negative

Source: Moody's, Standard and Poor, Fitch

Without a doubt, the adverse impacts of the global crisis hampered the country's long-term notable gains. However, recent reports also show a promising growth forecast for the country as global recovery sustains its momentum. Particularly, the country posted a strong rebound in the second quarter of 2021 with a GDP growth of 11.8% compared to the -16.9% rate of the same period last year. Categorically, the main contributors are manufacturing (22.3%); construction (25.7%); and wholesale and retail trade; repair of motor vehicles and motorcycles (5.4%). Among the major economic sectors, Industry and Services posted positive growths of 20.8% and 9.6%, respectively.[17]GDP growth is also expected to increase at 4.5% in 2021 and 5.5% in 2022; while inflation rates are forecasted at 4.1% in 2021 and 3.5% in 2022.[18] However, the country continues to be vulnerable given the emergence of new variants of the virus and hiccups on the vaccine rollout. With this, substantial reforms on key economic policies, ease of doing business, investment on digital infrastructure, and strengthening the public health system have a pivotal role for the country to address the adverse impacts caused by the pandemic as well as boost economic recovery and competitiveness.

Billion. Retrieved from https://www.bsp.gov.ph/SitePages/MediaAndResearch/MediaDisp.aspx?ItemId=5926

12 Bangko Sentral ng Pilipinas. (n.d.) Net Foreign Investment Flows. Retrieved from https://www.bsp.gov.ph/statistics/external/Table%20 10.pdf

13 Philippine Statistics Authority. (August 2021). 2020 Foreign Trade Statistics of the Philippines. Retrieved from https://psa.gov.ph/sites/default/files/2020%20FTS%20Publication_signed-compressed.pdf

14 European Commission. (2021). Countries and Regions: The Philippines. Retrieved from https://ec.europa.eu/trade/policy/countries-and-regions/countries/philippines/

15 Philippine Statistics Authority. (28 April 2020). Highlights of the 2019 Annual Report on International Merchandise Trade Statistics of the Philippines. Retrieved from https://psa.gov.ph/content/highlights-2019-annual-report-international-merchandise-trade-statistics-philippines

16 FitchRatings. (12 July 2021). Fitch Revises Philippines' Outlook to Negative; Affirms at 'BBB'. Retrieved from https://www.fitchratings.com/research/sovereigns/fitch-revises-philippines-outlook-to-negative-affirms-at-bbb-12-07-2021

17 Philippine Statistics Authority. (10 August 2021). GDP posted double digit growth of 11.8 percent in the second quarter of 2021, the highest since fourth quarter of 1988. Retrieved from https://psa.gov.ph/national-accounts

18 Asian Development Bank. (n.d.). Economic indicators for the Philippines. Retrieved from https://www.adb.org/countries/philippines/economy

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INTRODUCTION

As globalization increased, supply chains have become significantly more interconnected. The ongoing COVID-19 pandemic, however, has massively disrupted supply chains and has limited trade and investment flows with border closures and other mobility restrictions. The turn of events has caused a slowdown of commerce and customs clearance activities, reduced demand in certain sectors, cancellations of flights, as well as restrictions on the movements of business personnel.

In the local context, the Philippine Statistics Authority (PSA) reported a significant drop in the Gross Value Added (GVA) of the transportation and storage sector with a decline in all industries except for postal and courier activities. Nevertheless, the sector will continue to have a critical role in economic growth as it connects businesses to both domestic and global markets. A well-structured logistics network is also imperative for productivity and growth considering its impact on economic activities, especially for the Philippines, an archipelago, which requires air, land and sea transport networks.

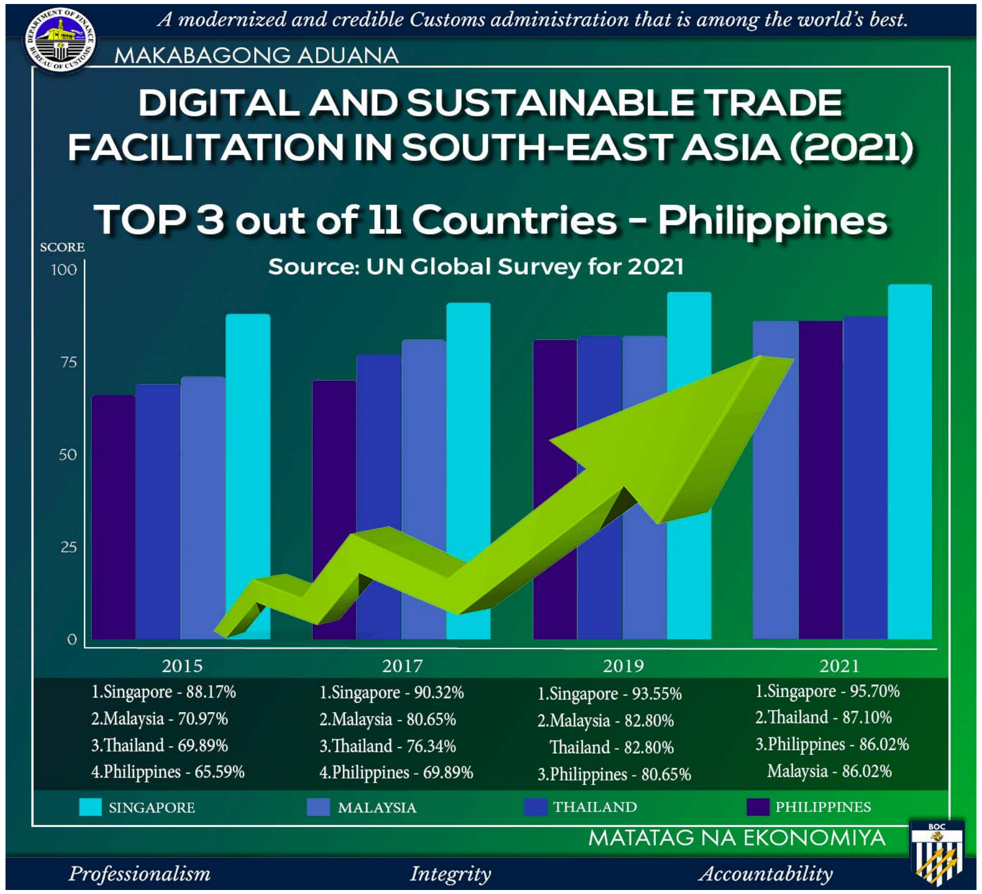
Gross Value Added in Transportation and Storage, by Industry
Annual 2019 and 2020
At Current Prices (in million Philippine pesos)

Industry	2019	2020
Land transport	401,050	298,997
Water transport	41,499	26,888
Air transport	113,259	33,444
Warehousing and storage, and support activities for transportation	173,679	161,120
Postal and courier activities	28,174	28,524
Gross Value Added in Transportation and Storage	**757,661**	**548,973**

Source: Philippine Statistics Authority

On a positive note, the country has taken steps towards modernization through the simplification and streamlining of trade processes and procedures. In the 2021 United Nations Global Survey on Digital and Sustainable Trade Facilitation, the Philippines ranked 3rd in the digital and sustainable trade facilitation in Southeast Asia, garnering a score of 86.02% and trailing behind only Singapore with a 95.70% rating and Thailand at 87.10%. This is deemed an improvement from the Philippines' previous 2019 rating of 80.65%. Under this global survey, five areas were considered which are namely, transparency, formalities, institutional arrangement and cooperation, paperless trade and cross-border paperless trade.[1]

1 Bureau of Customs (2021). Philippines ranks 3rd in Trade Facilitation among Southeast Asian nations. Retrieved from https://customs.gov.ph/philippines-ranks-3rd-in-trade-facilitation-among-southeast-asian-nations/.



Source: TradeNet[2]

Recognizing the importance of logistics, customs and trade facilitation, the European Chamber of Commerce of the Philippines (ECCP) urges the relevant government agencies to address industry concerns through the following: (1) upholding the sanctity of contractual relations; (2) transparency of destination charges imposed; (3) observance of INCOTERMS if the contract of carriage so provides; (4) regulation of demurrage and detention charges; (5) study and imposition of the appropriate taxes on the charging of destination charges; and (6) designation of MARINA to have primary jurisdiction over the promotion of fair and transparent destination and other shipping charges among forwarders and agents of international shipping lines. These will be explained further in the succeeding sections of the paper.

On addressing shipping

Two House bills were filed to regulate international shipping lines. **House Bill (HB) No. 4316**[3] introduced by Rep. Bernadette Herrera-Dy seeks to regulate the application of local charges (at origin and destination) imposed by international shipping lines to comply with existing laws on obligations and contracts and international commercial terminology (INCOTERMS), establishing guidelines, therefore. On a related note, **HB 4462**[4] introduced by Rep. Ronnie Ong mandates to promote fair and transparent destination and other shipping charges among forwarders and agents of international shipping lines. The said bill also proposes to appoint MARINA to have primary jurisdiction over the promotion of fair and transparent destination and other shipping charges among forwarders and agents of international shipping lines.

Subsequently, a substitute House Bill was recently filed, consolidating HB Nos. 4316 and 4462 authored by Representatives Bernadette Herrera-Dy, and Ronnie Ong, respectively. The substitute version is now co-sponsored by the two said legislators and the House Transportation Committee Chairperson himself, Rep. Edgar Mary Sarmiento.

Similarly, we take note of recent measures by the United States in studying the current shipping practices in order to encourage healthy competition across several sectors and further protect American exporters from high fees. In July 2021, an Executive Order was issued concerning ocean shipping and called for improved detention and demurrage practices for container traffic.[5]

On the National and ASEAN Single Window

Source: TradeNet

Following the completion of the TradeNet's connection to the ASEAN Single Window (ASW) in 2018 as well as the 2nd round of end-to-end test with Myanmar and other ASEAN Member States in 2019, the government has now mandated all trade regulatory government agencies to utilize the system.[6] On 5 March 2021, the Anti-Red Tape Authority issued Memorandum Circular No. 2021-01 and Ease of Doing Business and Anti-Red Tape Advisory (EODB-ARTA) containing the guidelines and timelines for the onboarding of all 73 concerned agencies.

2 TradeNet (n.d.). TradeNet Overview. Retrieved from http://info.tradenet.gov.ph/about-us/tradenet-overview/.
3 HB No. 4316: AN ACT REGULATING THE APPLICATION OF LOCAL CHARGES (AT ORIGIN AND DESTINATION) IMPOSED BY INTERNATIONAL SHIPPING LINES TO COMPLY WITH EXISTING LAWS ON OBLIGATIONS AND CONTRACTS AND INTERNATIONAL COMMERCIAL TERMINOLOGY (INCOTERMS) ESTABLISHING GUIDELINES THEREFOR by Rep. Bernadette Hererra-Dy
4 HB No. 4462: AN ACT MANDATING THE MARITIME INDUSTRY AUTHORITY TO PROMOTE FAIR AND TRANSPARENT DESTINATION AND OTHER SHIPPING CHARGES AMONG FORWARDERS AND AGENTS OF INTERNATIONAL SHIPPING LINES by Rep. Ronnie L. Ong
5 The Journal of Commerce Online (9 July 2021). Biden executive order adds urgency to FMC review of ocean shipping. Retrieved from https://www.joc.com/maritime-news/biden-executive-order-adds-urgency-fmc-review-ocean-shipping_20210709.html.
6 Philippine News Agency.(2021). Trade Regulatory Offices told to get onboard with TradeNet. Retrieved from https://www.pna.gov.ph/articles/1133222

On developments and reforms in the Bureau of Customs

On the Bureau of Customs' end, the Agency implemented various ICT reforms[7] such as:

- the launching of the **Electronic Tracking of Containerized Cargo System[8]** which functions as the central monitoring hub for nationwide tracking of container cargoes.
- the implementation of the **Electronic Value Reference Information System (e-VRIS)[9]** following the signing of Customs Memorandum Order (CMO) No. 16-2020. This implements the Enhanced Value Reference Information System (e-VRIS) which is a database of reference values that will operate in the electronic to mobile (E2M) system. This succeeds the existing National Value Verification System (NVVS) established in 2019 to protect government revenues against errors in invoicing and classification.
- Ongoing process of implementing the Customs Modernization project.

The European-Philippine business community also takes note of the following **Customs issuances**:

- **Customs Memorandum Order (CMO) 12-2021**[10] This CMO, signed and made effective on 18 March 2021, covers warning, suspension, revocation of the BOC accreditation of importers and Customs Brokers including blacklisting as sanctions to be imposed by BOC.
- **Customs Administrative Order (CAO) 1-2020[11]** The Bureau of Customs issued new fines and surcharges for clerical errors, misdeclaration, misclassification, and undervaluation. This issuance covers all goods declarations. This amends or repeals guidelines for imposing surcharges under CAOs 01-2014 and 06-2014, and other issuances inconsistent with its provisions. This implements and clarifies the Customs Modernization and Tariff Act (CMTA) Sections 108 (Penalties for Errors in Goods Declaration) and Sections 1400 (Misdeclaration, misclassifications, undervaluation in goods declaration). This imposes a PHP 5,000 fine for every clerical error committed in the covering goods declaration upon its lodgment. This is without prejudice to additional fines or penalties being imposed for other.

7 Department of Finance (April 2021). Sulong Pilipinas: Partners for Progress Presentation. Retrieved from https://www.dof.gov.ph/download/opening-remarks-a-pre-sona-economic-development-and-infrastructure-clusters-forumapril-26-2021/?wpdmdl=28652&refresh=6134c1c4d71931630847428.

8 Bureau of Customs (September 2020). BOC activates E-TRACC Monitoring Center. Retrieved fromhttps://customs.gov.ph/boc-activates-e-tracc-monitoring-center/

9 Bureau of Customs (July 2020). BOC Enhances Value Reference Information System. Retrieved from https://customs.gov.ph/boc-enhances-value-reference-information-system/

10 Bureau of Customs (2021). Customs Administrative Order No. 12-2021. Retrieved from https://customs.gov.ph/wp-content/uploads/2021/03/CMO-12-2021-Guidelines-on-the-Imposition-of-Penalties-Relative-to-the-Customs-Accreditation-of-Importers-and-Brokers.pdf last 17 July 2021.

11 Bureau of Customs (2020). Customs Administrative Order No. 1-2020. Retrieved from https://customs.gov.ph/wp-content/uploads/2020/03/CAO_01-2020-Fines_and_Surcharges_for_Clerical_Error.pdf last 17 July 2021.

ADVOCACY RECOMMENDATIONS

ON SHIPPING COSTS & DESTINATION CHARGES

Establish fair guidelines to regulate the application of local charges at origin and destinations imposed by international shipping lines to comply with existing laws on obligations and contracts and international commercial terminology (INCOTERMS)

Strengthen and appoint MARINA to have primary jurisdiction the promotion of fair and transparent destination and other shipping charges among forwarders and agents of international shipping lines.

Over the years, stakeholders of the Philippine logistics services sector have experienced high shipping costs, excessive and unnecessary fees, charges and surcharges imposed as origin and destination charges. These charges imposed and collected at will by international shipping lines have negatively affected the economy as it spikes the cost of importing raw and intermediate goods; escalates the prices paid by domestic consumers; and undermines the government's collection of correct taxes. While fair competition on the international lines shipping industry should be unregulated, it should not be left unbridled as far as imposing myriads of destination charges. Unfortunately, such a scheme has adversely impacted the competitiveness of local industries and is estimated to cost the Philippine economy about USD 2 billion to USD 5 billion per year.

The "prepaid" INCOTERM arrangement is subverted to zero or negative freight at origin and consequently is recovered by charging exorbitant amounts at destination to recover the cost of such negative or highly subsidized freight, to the detriment and injury of the consignee of the shipment.

Under prepaid INCOTERM shipping arrangements, the shipper should be the one to pay all appertaining costs of the shipment of the goods to the designated delivery place of the consignee. However, with the unscrupulous scheme employed by some shipping lines, the freight that should have been collected from the shipper is charged to the consignee as "destination charges" even if there is no existing contract of affreightment between the shipping line and the consignee at the destination in violation of the privity of contract principle. Also, while indeed shipping lines are not party to the INCOTerms agreed by the shipper and the buyer, the shipping lines must, however, comply and adhere to the contract of affreightment shipping lines entered into by the party that engaged their services. The **rule should be that no origin and destination charges shall be billed and/or charged by international shipping lines to Philippine consignees** in the absence of a contractual relationship with the carriers, and/or if they are not obligated to pay them under INCOTERMS.

Non-adherence to INCOTERMS through negative freight arrangement impairs the right of the government to collect the right amount of taxes from importers as there is little international shipping lines that call at Philippine ports **should be mandated to justify the collection of destination charges and local charges as well as clarify the nature thereof and explaining the corresponding local services rendered in exchange for such charges.** By doing this, the government can separate and identify what are the different destination charges or local charges being collected that are considered local services activities within the Philippines, which are apart from the freight paid to the shipping lines outside the Philippines.

There should also be a proper identification of the type and situs of revenue created by these destination charges in order for the taxing authority to determine whether these charges are imposed as local services. As such, all revenues generated by international shipping lines for destination charges generated for local services within the Philippines can be imposed with the appropriate taxes (income tax and VAT for services) in accordance with the applicable provisions of the Tax Code.

Considering the foregoing, the ECCP appreciates the recent move of the House of Representatives to address concerns and regulate international shipping lines. In principle, the ECCP supports the substitute House Bill[12] as it still enshrines the crucial and salient provisions that were contributed in HB Nos. 4316 and 4462, such as (1) upholding the sanctity of contractual relations; (2) transparency of destination charges imposed; (3) observance of INCOTERMS if the contract of carriage so provides; (4) regulation of demurrage and detention charges; and (5) study and imposition of the appropriate taxes on the charging of destination charges.

However, the said consolidated version, in its current form, suggests the creation of the Philippine Shipping Board, which will be the regulatory agency composed of different government agencies and stakeholders in the private sector that will, in essence, regulate destination charges. Its mandate is to formulate a National Logistics Efficiency Policy (NLEP) to ensure the efficiency of customs and border management, quality of trade and transport infrastructure, the competence of logistics services, and ability to track and trace consignments and competitively priced shipments.

While we recognize the intention behind the proposal to create another government regulatory board, we, however, submit that it may defeat the purpose of expeditiously addressing the problem sought to be remedied by the consolidated House Bill. The creation of another board comprising of representatives of government agencies and the private sector to be the regulators, while with noble intention, will add another layer of bureaucracy that may cause a delay in addressing the problem that has been going in for years. It bears stressing that if the HB is promulgated into law, it is not only the fiat of the law that would matter but also its steadfast and unbridled implementation.

The Committee may want to evaluate and consider designating an existing government agency to carry out and implement the mandate of the HB. For this purpose, we **submit that the Maritime Industry Authority (MARINA) be the sole implementing regulator**. The MARINA is already empowered through its charter, among others, to regulate the registration of international liners calling the ports of the Philippines and, most importantly, is empowered with quasi-judicial functions to adjudicate violations of law and impose corresponding penalties within its jurisdictional powers. Thus, it will be a complete end-to-end process.

Designating MARINA as the sole regulator does not mean that the law will not recognize other government agencies' experts on trade regulations by law. The HB may include a provision that representatives of other government agencies may be appointed as ex-officio members and/or in *an en consulta* capacity of the unit within MARINA tasked to implement the law. As such, the Committee may want to consider harmonizing these powers and expertise.

In sum, if the government aspire for an expeditious, simplified, and streamlined process of regulation, adjudication, and penalty imposition for violations of the mandate of the HB, the primary powers to do so must be lodged in one government arm and not fragmented.

On the imposition of fair, commensurate and graduated fines and surcharges for clerical errors, misdeclaration, misclassification and undervaluation

Revisit and re-establish if the PHP 5,000 penalty for every clerical error determined, and in the absence of a maximum penalty to be imposed for every good declaration, is indeed not excessive particularly for a clerical error that has no effect to the valuation and assessment of the duties and taxes.

To discourage repetition of errors on goods declaration, Section 4.1 **of CAO No. 01-2020** stipulates that, "the concerned District Collector, through the Deputy Collector for Assessment, shall, in addition to the assessed duties, taxes, fees, fines or surcharges due, collect a fine of Five Thousand Pesos (PHP 5,000) for every clerical error determined to have been committed in the covering Goods Declaration upon the Lodgment thereof."

However, we wish to refer to the Customs Modernization and Tariff Act (CMTA)'s Section 108 on penalties for errors in goods declaration stipulates that "'the Bureau shall not impose substantial penalties for errors when such errors are inadvertent and there was no fraudulent intent or gross negligence in the commission thereof: Provided, That in order to discourage repetition of such errors, a penalty may be imposed but shall not be excessive."

In this context, **it must be established if the PHP 5,000 penalty for every clerical error determined, and in the absence of a maximum penalty to be imposed for every good declaration, is not excessive particularly for a clerical error that has no effect to the valuation and assessment of the duties and taxes.** While the BOC has the power to regulate and impose corresponding penalties for clerical errors, the penalty relating to CAO 01-2020 must be commensurate with and graduated to the act or omission being penalized. Otherwise, excessive or exorbitant penalties imposed on acts or omissions that are defined in law as 'inadvertent' and falls on excusable negligence are arguably confiscatory and arbitrary.

Furthermore, there is prevailing public perception that in order to avoid imposition of a PHP 5,000 penalty per clerical error, an unreceipted cost of PHP 2,000 per clerical error can be paid, which is ultimately passed to the public as cost of importation. Furthermore, we recommend that importers and declarants would not be fined or penalized on e2m system limitations and on changes/revisions to Goods Declarations triggered by the Bureau for the proper assessment of duties and taxes of the goods that is not connected to the data input made by the importer or Declarant and revisions made outside of the definition of clerical error as provided under Section 4.1.1 of this CAO.

On Customs Memorandum Order No. 12-2021's guidelines on the imposition of penalties relative to the Customs Accreditation of Importers

We respectfully submit our recommendations and comments on the following sections of said CMO:

SECTION	RECOMMENDATIONS AND COMMENTS
Section 2 - General Provision Section 2.2 The accreditation of the importer or broker may be preliminary suspended pending proper administrative proceedings to ensure border protection, suppress all forms of smuggling and other frauds committed against collection of lawful revenues.	The temporary suspension of a maximum period of 90 days could have a significant impact to the importers or brokers' other shipments not covered with any derogatory report or suspected violation of the Customs laws, rules and regulations. While the CMO provides for the guidelines in requesting for continuous processing of the importers or brokers' other shipments, below specific requirements and limitations will result in delays in clearing the goods from customs: (1) It will only cover shipments in transit or which arrived at ports prior to preliminary suspension; (2) The request for continuous processing will need to be filed at the legal service for resolution and approval of the Customs Commissioner; and (3) 100% examination of the goods regardless of selectivity screen to be conducted with cost to be incurred by the requestor.

12 This substitute bill is the consolidated version of HB Nos. 4316 and 4462. The substitute version is now co-sponsored by the two said legislators and the House Transportation Committee Chairman himself, Rep. Edgar Mary Sarmiento.

Section 4 - Grounds for Preliminary Suspension Section 4.3 Other analogous circumstances, at the discretion of the Commissioner	The ECCP **strongly recommends the removal of "other analogous circumstances" as a ground for preliminary suspension as it is vague and could be used discriminatorily.** Section 4.3 is pervasive and overbroad and does not specifically provide what it proscribes. While the BOC, in exercising its power to declare what acts constitute an offense, it must do so with reasonable precision what acts it intends to prohibit so that he may have a certain understandable rule of conduct and know what acts it is his duty to avoid. "This requirement has come to be known as the void-for-vagueness doctrine which states that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." (People of the Philippines vs. Siton, G.R. No. 169364, September 18, 2009)
Section 6 - Penalties 6.1 Light Infractions – Suspension of accreditation privileges for a period of 1 month to 6 months: (a.) Inadvertent mistake or erroneous information in the submitted documents, not substantial in nature; (b.) Failure to report changes in requirements after approval of accreditation; (c.) Late submission of import permit/clearance issued by government agencies for regulated and restricted imports/exports; (d.) Excusable negligence in protecting e2m password from abuse and misuse; and (e.) Other analogous circumstances.	The penalties prescribed by the CMO under Section 6.1 (Light Infractions) are grave penalties that are not commensurate with the acts being penalized. The acts penalized under Section 6.1 are in nature 'excusable negligence', honest mistake or delays in submission of updated documentation. These are merely administrative requirements that do not involve defrauding the government or impairing the government's right to collect the correct duties and taxes. Therefore, the imposition of a maximum of six (6) months of suspension of customs accreditation is confiscatory and may be subject to abuse or misuse. As such, we urge BOC to **review and consider the deletion of Sec. 6.1 Light Infractions or at the very least 6.1(a), or a reduction of penalties as the same is too much for the light infractions contemplated therein.**

In light of the foregoing, the ECCP kindly appeals to the Bureau of Customs to review aforesaid penalties to determine if these are commensurate with the errors commission or omissions being penalized.

ASSESSMENT OF 2019 RECOMMENDATIONS

ADVOCACY	COMPLETED / SUBSTANTIAL PROGRESS	SOME PROGRESS	NO PROGRESS/ RETROGRESSION
Customs Memorandum Order No. 27-2019 *Customs Memorandum Order No. 27-2019 must be amended or clarified to clearly provide for a possible extension of time (within which to file the goods declaration) based on valid grounds.*	This concern regarding the period for lodging goods declaration has been resolved.		
High shipping costs and port congestion		Two House bills were filed to regulate international shipping lines. **House Bill (HB) No. 4316**[13] introduced by Rep. Bernadette Herrera-Dy seeks to regulate the application of local charges (at origin and destination) imposed by international shipping lines to comply with existing laws on obligations and contracts and international commercial terminology (INCOTERMS), establishing guidelines, therefore. On a related note, **HB 4462**[14] introduced by Rep. Ronnie Ong mandates to promote fair and transparent destination and other shipping charges among forwarders and agents of international shipping lines. The said bill also proposes to appoint MARINA to have primary jurisdiction over the promotion of fair and transparent destination and other shipping charges among forwarders and agents of international shipping lines. Subsequently, a substitute House Bill was recently filed, consolidating HB Nos. 4316 and 4462 authored by Representatives Bernadette Herrera-Dy, and Ronnie Ong, respectively. The substitute version is now co-sponsored by the two said legislators and the House Transportation Committee Chairperson himself, Rep. Edgar Mary Sarmiento.	
NATIONAL SINGLE WINDOW (NSW) AND THE ASEAN SINGLE WINDOW (ASW) *Fully operationalize the National Single Window (NSW) and integrate it with the ASEAN Single Window (ASW).*		Following the completion of the TradeNet's connection to the ASEAN Single Window (ASW) in 2018 as well as the 2nd round of end-to-end test with Myanmar and other ASEAN Member States in 2019, the government has now mandated all trade regulatory government agencies to utilize the system. On 5 March 2021, the Anti-Red Tape Authority issued Memorandum Circular No. 2021-01 and Ease of Doing Business and Anti-Red Tape Advisory (EODB-ARTA) containing the guidelines and timelines for the onboarding of all 73 concerned agencies.	

13 HB No. 4316: AN ACT REGULATING THE APPLICATION OF LOCAL CHARGES (AT ORIGIN AND DESTINATION) IMPOSED BY INTERNATIONAL SHIPPING LINES TO COMPLY WITH EXISTING LAWS ON OBLIGATIONS AND CONTRACTS AND INTERNATIONAL COMMERCIAL TERMINOLOGY (INCOTERMS) ESTABLISHING GUIDELINES THEREFOR by Rep. Bernadette Hererra-Dy

14 HB No. 4462: AN ACT MANDATING THE MARITIME INDUSTRY AUTHORITY TO PROMOTE FAIR AND TRANSPARENT DESTINATION AND OTHER SHIPPING CHARGES AMONG FORWARDERS AND AGENTS OF INTERNATIONAL SHIPPING LINES by Rep. Ronnie L. Ong

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