

A Public Administration Reform in the Philippine Bureau of Customs: The Case of Following and Not Following Customs Regulations

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โดยธรรมเนียมปฏิบัติที่ผ่านมา การทุจริตในสำนักงานศุลกากรจัดว่าร้ายแรงมาก แต่วันนี้ชาวฟิลิปปินส์สามารถพูดได้ว่า เป็นห้วงเวลาที่ต้องชมเชยผลงานที่มาจาก การปฏิรูปการบริหารราชการ ซึ่งประธานาธิบดีเบนิกโน อากีโน ที่ 3 (Benigno Aquino III) ได้ดำเนินมาตรการหลายประการในการกวาดล้างและต่อต้านการทุจริตในภาครัฐ รวมถึงการทุจริตในสำนักงานศุลกากร

ผลการศึกษาคู่กรณีต่อต้านการทุจริตในฟิลิปปินส์ของปาเรย์โน (Parayno) เมื่อปี พ.ศ. 2556 กล่าวถึงการที่รัฐต้องสูญเสียรายได้จํานวนมหาศาลอันเป็นผลมาจากการทุจริต โดยส่วนที่เป็น การลักลอบขนสินค้าหนีภาษีเข้าประเทศ เชื่อได้ว่าเกิดความสูญเสียระหว่างร้อยละ 12 ถึงร้อยละ 53 ของปริมาณการนำเข้าที่มีการบันทึกไว้

บริษัทนำเข้าชิ้นส่วนอิเล็กทรอนิกส์ (สารกึ่งตัวนำ) และอุปกรณ์อิเล็กทรอนิกส์ในประเทศฟิลิปปินส์ เป็นกลุ่มบริษัทสำคัญที่ต้องดำเนินการตามกฎระเบียบและวิธีการทางศุลกากรที่กำหนดโดยสำนักงานศุลกากร ระเบียบกำหนดว่าสินค้าประเภทนี้จำเป็นต้องผ่านการพิจารณาอนุมัติก่อนที่จะมีการนำเข้า โดยเฉพาะสินค้าควบคุมบางประเภทที่ระบุในระเบียบ สำนักงานศุลกากรเป็นหน่วยงานหลักที่มีหน้าที่รับผิดชอบ ในการควบคุมและติดตามการนำเข้าและส่งออกของประเทศ ซึ่งบทบาทหน้าที่เช่นนี้เป็นช่องทางที่นำไปสู่การทุจริต หากหน่วยงานนี้ปราศจากขั้นตอนที่ยุงยากและยืดยาวและปลอดภัยจากการทุจริตก็จะเป็นประโยชน์โดยตรงต่อเศรษฐกิจของประเทศ ได้แก่ การที่ประเทศมีรายได้จากการนำเข้าสินค้าเพิ่มขึ้น การจัดสรรทรัพยากรอย่างเหมาะสมนำไปสู่การกำหนดค่าใช้จ่ายที่ดีขึ้น และการลดขั้นตอนสำหรับการดำเนินธุรกิจของบริษัทจะกระตุ้นนักลงทุนเพิ่มขึ้นในประเทศ ซึ่งมีผลต่ออัตราการจ้างงานเพิ่มขึ้นด้วย

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การศึกษาเกี่ยวกับการปฏิรูประบบบริหารราชการในสำนักงานศุลกากรของฟิลิปปินส์ ที่ศึกษากรณีตัวอย่างของสถานประกอบการที่ดำเนินงานตามกฎหมายระเบียบและกรณีที่ไม่ดำเนินงานตามกฎหมายระเบียบของบริษัทที่นำเข้าชิ้นส่วนอิเล็กทรอนิกส์และอุปกรณ์อิเล็กทรอนิกส์ ดำเนินการศึกษาจากการวิเคราะห์จากการสำรวจการนำเข้าสินค้ากลุ่มนี้ของบริษัทที่ตั้งอยู่ในเขตเศรษฐกิจพิเศษของฟิลิปปินส์ (Philippine Economic Zone Authority, PEZA) ในภูมิภาคที่ 4 เอ ซึ่งเรียกกันว่า “คาลาบาร์ซอน” (CALABARZON) การศึกษานี้เน้นตอบคำถามวิจัยดังนี้ (1) การนำเข้าชิ้นส่วนอิเล็กทรอนิกส์ (สารกึ่งตัวนำ) และอุปกรณ์อิเล็กทรอนิกส์ ทั้งการนำเข้าทางอากาศและทางทะเลของบริษัทที่ดำเนินงานตามกฎหมายที่กำหนดโดยสำนักงานศุลกากร และบริษัทที่ไม่ดำเนินงานตามกฎหมายระเบียบฯ จะมีนัยสำคัญต่อระยะเวลาการดำเนินงานทางศุลกากรและค่าใช้จ่ายในการดำเนินงานอย่างไร และ (2) มีข้อเสนอแนะแนวทางวิธีการอย่างไร สำหรับบริษัทที่นำเข้าชิ้นส่วนอิเล็กทรอนิกส์ (สารกึ่งตัวนำ) และอุปกรณ์อิเล็กทรอนิกส์ ที่ตั้งอยู่ในเขตเศรษฐกิจพิเศษของฟิลิปปินส์ เพื่อป้องกันการกักสินค้าของศุลกากร อันเป็นหนทางในการลดการทุจริต

การศึกษานี้ เป็นการสำรวจความคิดเห็นของเจ้าหน้าที่ระดับผู้จัดการด้านจัดซื้อจัดจ้างและกระบวนการดำเนินงานที่ทำงานในเขต PEZA ใน “คาลาบาร์ซอน” ระหว่างเดือนเมษายนถึงกรกฎาคม พ.ศ. 2557 โดยการศึกษาและการวิเคราะห์เชิงสถิติ พบว่า บริษัทที่ไม่ดำเนินงานตามกฎหมายระเบียบฯ จะต้องใช้เวลาในกระบวนการขนส่งสินค้านานกว่าบริษัทที่ดำเนินงานตามกฎหมายที่กำหนดโดยสำนักงานศุลกากร นอกจากนี้ บริษัทที่ไม่ดำเนินงานตามกฎหมายระเบียบฯ จะมีค่าใช้จ่ายพิเศษเพิ่มขึ้นสำหรับกระบวนการขนส่งสินค้า ในขณะที่บริษัทที่ดำเนินงานตามกฎหมายที่กำหนดโดยสำนักงานศุลกากร ไม่มีค่าใช้จ่ายส่วนนี้

คำสำคัญ: การปฏิรูปกฎระเบียบและวิธีการทางศุลกากร การป้องกันการทุจริตในกระบวนการศุลกากร ฟิลิปปินส์

Abstract

Traditionally, corruption in the Philippine Bureau of Customs was so rampant. Today, Filipinos can say that the time has come to appreciate the reforms in public administration. Philippine president, Benigno Aquino III, has made a lot of cleansing in combating corruption in the government including the Bureau of Customs.

Parayno (2013), in his study about combating corruption in the Philippine Customs services, mentioned huge customs revenue losses due to corruption.

The extent of smuggling in the Philippines is widely believed to go between 12.2% and 53% of recorded imports.

The semiconductor and electronics companies in the Philippines among other significant businesses in the country are required to comply with the regulations of the Bureau of Customs. The regulatory requirements of customs must be considered before importing goods, particularly the regulated ones. The Bureau of Customs is considered as one of the lead agencies responsible for controlling and monitoring the import and export flow in the Philippines. Comes with its mandate is its likelihood of falling into corruption. If this bureau does not have red tapes and corruption, there will be direct benefits to the Philippine economy such as more revenues from import goods, proper allocation of customs resources leading to better cost usage, and ease of doing business thereby attracting more investors in the country, thus creating more jobs for Filipinos.

This study about public administration reform in the Philippine Bureau of Customs, specifically the case study of following and not following customs regulations, is made via analysis of a survey conducted in the importation of the semiconductor and electronics companies in the Philippine Economic Zone Authority (PEZA) in Region IV-A, widely known as CALABARZON. In evaluating this study, it was designed to answer the following research questions: (1) Are there significant effects on the companies' leadtime and cost between those companies who are following and not following the Bureau of Customs in both air and sea shipments? and (2) What will be the recommended model to be used by the semiconductor and electronics companies in PEZA to prevent holding of their goods in the Bureau of Customs, thus minimizing corruption?

In this study, a survey was carried out from April 2014 until July 2014, with procurement and logistics managers working in PEZA in CALABARZON as respondents. Gathered data were statistically tested to determine the effect of following and not following the Bureau of Customs regulations. The results of this study suggested that in terms of shipment by air or by sea, those semiconductor and electronics companies who were not following customs regulations got longer shipment lead time, while those semiconductor and electronics companies who were following customs regulations got shorter shipment lead time. Additionally, in terms of cost, it was revealed that those who were not following customs regulations got extra shipment cost, while those who were following customs regulations got zero extra shipment cost.

Keywords: customs regulations and procedures reform, customs corruption prevention, Philippine

1. Introduction

The main function of Bureau of Customs is to assess and collect the lawful revenues from import goods and all other dues, such as charges, fines and penalties ensuing under the tariff and customs laws. The other functions of customs include the prevention and suppression of smuggling, frauds, and the supervision and control over the entrance and clearance of aircraft and vessels engaged in foreign commerce, the enforcement of the tariff and custom laws and all other laws, rules and regulations relating to the tariff and customs laws, the rules and regulations relating to the tariff and customs administration.

It is mandatory for the semiconductor and electronics companies in the Philippine Economic Zone Authority (PEZA) to comply with the customs regulations as mandated by the state. As such, semiconductor and electronics companies are required to comply with these two major acts of the Philippines: (1) RA 1937, an Act to Revise and Codify the Tariff and Customs Laws of the Philippines Section 2530 Property Subject to Forfeiture, and (2) RA 6425, the Dangerous Drugs Act.

This study is the first of its kind in the Philippine setting. There are many studies about corruption in the Philippine government, especially corruption in the Bureau of Customs, but none did a research about the effect of

following and not following Customs Regulations requirements. Philippine senator Sonny Angara, in one of his speeches, mentioned that a big drain in government's coffers was smuggling. A 2014 Global Financial Integrity report found that the Philippine government lost up to USD23 billion since 1990 in customs revenue due to trade misinvoicing or misdeclaration ("technical smuggling"). According to Angara (2015) such could have been used to improve more classrooms, equip more hospitals, and build better roads. The Government Financial Investment report found that such illicit financial flows fund an "underground economy" that by virtue of its informality, not to mention its criminality, further drains government coffers. For this reason, the Aquino Government continues the push for a Customs Modernization and Tariffs Act (CMTA), meant to comply with the Revised Kyoto Convention (RKC) on the simplification and harmonization of customs procedures and to help all efforts at trade facilitation in the country. This government initiative helps to rationalize and speed up the customs procedures so that it makes more economic sense to comply rather than take the backdoor and go underground. The requirements of Bureau of Customs must be considered before importing the goods, particularly the regulated ones. With this, the goods would be put on hold at the Philippine Customs if those were imported without import permit, and

as a penalty, the importers need to pay the duties and taxes. In the case of hold regulated commodities, all of the necessary requirements must be presented such as complete composition of material data safety sheet (MSDS), complete certificates from Philippine Drug Enforcement Agency (PDEA), certification from Environmental Management Bureau (EMB), and other pertinent documents needed in order to release the shipments.

2. The effect of not following customs regulations

The effect of not following customs regulations in the lead time and facilitation cost of semiconductor and electronics companies can be seen from the survey.

In the survey of following and not following the customs regulations, this study showed that out of two thousand three hundred six (2,306) shipments from April 2014 until July 2014, with the total respondents of 60 companies, 45 companies were found doing a facilitation. These 45 companies were used to hand-over to the customs employees an average of USD3,600 dollar, mostly to chemical clearance at district collector due to non-compliance for material data safety sheet (MSDS), lack of Environmental Management Board (EMB) certificate, Philippine Drug Enforcement Agency certificate (PDEA), etc. In general, MSDS, EMB,

PDEA are pre importation requirements for mostly chemical shipments and should be available before order placement.

This study further showed that in terms of shipment by air, those semiconductor and electronics companies who were not following the customs regulations had a longer leadtime, with an average of 9 days and with a maximum leadtime of 33 days, while those semiconductor and electronics companies who were following customs regulations got an average leadtime of 1 day and with a maximum of 1 day.

In terms of cost for shipment by air, those who were not following the customs regulations had an average cost of USD73 dollar, with a maximum cost of USD116 dollar, while those who were following the customs regulations had zero cost as shown in Table 1.

In terms of sea shipment, the results show that those who were not following the customs regulations had an average leadtime of 4 days with maximum leadtime of 21 days, while those who were following had an average of 3 days with a maximum of 18 days. Considering the cost, those who were not following the customs regulations got an average cost of USD42 dollar, with a maximum cost of USD349 dollar, while those who were following had zero cost.

Table 1: Leadtime and cost of semiconductor and electronics companies following and not following the customs regulations

Freight	Min Leadtime	Average Leadtime (days)	Max Leadtime (days)	Min Facilitation Fee (USD)	Average Facilitation Fee (USD)	Max Facilitation Fee (USD)
Air	-					
Follow	-	9	33	12.00	73.00	116.00
Not Follow	-	1	1	-	-	-
Sea	-					
Follow	-	4	21	-	42.00	349.00
Not Follow	-	3	18	-	-	-

On the other hand, Table 2 describes the reasons why goods were put on hold at the Bureau of Customs. It was observed that most of the shipments that were put on hold was due to regulatory requirements such as Customs Narcotics Interdiction Unit (CNIU) requires a certificate or special import permit from Philippine Drug Enforcement Agency (PDEA) and certificate from Environmental Management Board EMB, lack of Material Safety Data Sheet (MSDS), and others. This lack of pre-importation

requirements leads to delay in releasing of goods that affects the company's productivity, incurs penalty, and encourages facilitation fee to some corrupt customs employees. The actual findings also showed that the average facilitation fee by the importer was amounting to USD35 and the lack of MSDS for chemicals has an average facilitation fee of USD333, these fees can be prevented if the importer can legally secure these requirements from the shipper's abroad which were available to every supplier.

Table 2: Reasons for importation hold in the Bureau of Customs for the semiconductor and electronics companies of not following the customs regulations requirements

Reason of Holding of Goods at The Bureau of Customs	Average Leadtime (days)	Average Facilitation Fee (USD)
CNIU require PDEA Special Import Permit	6	35
CNIU require certificate from EMB	3	111
Expired PDEA certificate	3	11
Need PICCS certificate from EMB	8	77
Need SQI certificate from EMB	9	75
No PICCS certificate	33	22
Weight exceeded as per CNIU for the required kilos to Import as base on SQI certificate	4	11
5 days processing of payment of duties and taxes at Bureau of Customs-Manila International Container Port	7	100
Adjust schedule of release	13	35
Documents, Invoice, Air Way Bill delayed	21	35
Lack of MSDS for tapping paste	8	333
Lack of MSDS for Ethanol Absolute	4	78
Late received of Bill of Lading from consignee	-	22
Need to upload additional importable on AIP (misinvoicing)	10	35
Late received of CTC documents from consignee	10	-
Need to upload additional importable on AIP	7	-

In order to help the semiconductor and electronics companies of PEZA, Table 3 provides a working model that will guide the flow of their customs transactions. The following requirements such as Material Safety Data Sheet (MSDS), Philippines Drug Enforcement Agency (PDEA), Philippine Inventory of Chemicals and Chemical Substances (PICCS), Small Quantity Importation (SQI), Environmental Compliance Certificate

(EMB), Dangerous Drugs Board Certificate (DDB), Pre-Manufacture and Pre-Importation Certificate (PMPIN) must be prepared and accomplished prior importation. This model if use correctly will prevent any delay and regulatory issues. It will surely benefit the importers as this model will be their potent guide if they intend to buy overseas, especially chemical goods which require stricter requirements.

Table 3: Recommended guide model to prevent holding goods in the Bureau of Customs for the semiconductor and electronics companies of PEZA

Trade	Responsible	Regulatory Requirements	Sources	Pre-requisite	Prevent show stopper	Action
Export	Seller	MSDS	Supplier	100% composition of substances	1. Supplier will provide MSDS with 100% composition 2. Supplier can have an option to disclose the information direct to EMB instead of their customers in the event that supplier wanted to protect trade secret	Complete the requirements before importation
Import	Buyer	PDEA permit	PDEA	MSDS	MSDS not available	
Import	Buyer	PICCS certificate	DENR-EMB	MSDS	MSDS not available	
Import	Buyer	SQI	DENR-EMB	MSDS	MSDS not available	
Import	Buyer	EMB certificate	PDEA	MSDS	MSDS not available	

3. The Reforms in the Philippine Bureau of Customs

The Aquino Government has been doing a lot of cleansing in the government specially in the Bureau of Customs. This bureau which was notoriously ranked as “terrible” in the past governance surveys due to its history of corruption, had introduced a number of changes and most were focused on cleansing its ranks and getting the right people in place to implement good systems. Part of a strong and reliable system to cleanse corruption in the Bureau of Customs is the migration of the Automated Customs Operating System (ACOS) to the Electronic to Mobile (E2M) system. This E2M approach to fight smuggling and customs corruption is an effective solution against corruption in the Bureau of Customs. Since this system is unified, the semiconductor and electronics companies list of importables (LOI) and the list from the Bureau of Customs are harmonized and tariff codes should match to prevent misdeclaration and under valuation of goods which lead to disapproval of import permit, holding of goods, possible embargo, and payment of corresponding duties and taxes.

With this new electronic to mobile (E2M) processing system, there will be little to zero opportunity for illegal facilitation, because most of the areas will have a pre-shipment inspection for container shipments, central valuation reference for all commodities, and compilation of all

special import requirements. This system addresses the problem as it was found that one of the reasons why most of the semiconductor and electronics companies of PEZA were not following customs regulations was because of their inconsistencies in verifying the complete requirements of Bureau of Customs. Also, most of them do not have training and are not well-versed on importation guidelines. It was also found that before their shipments leave in the country of origins, many companies did not properly coordinate with their suppliers and brokers.

Another part of the cleansing process is the implementation of penalties of duties and taxes and suspension of PEZA accreditation for the importers who found to be non-compliant to the new E2M. Furthermore, several memorandum orders were issued limiting the level of control officials to handover the clearance of goods as a means of reducing corruption in the Bureau. Sevilla (2014) said that more or less 300 customs personnel-many of them senior officers were removed in their positions. The administration also streamlined the cargo clearance process to limit the number and participation of law enforcement agencies.

With information technology as essential enabler, Bureau of Custom (BOC) systems and procedures are now better put in place to discourage corruption.

4. Conclusions

Contrary to the traditional belief that when the semiconductor and electronics companies of PEZA will not follow the customs regulation and instead do the facilitation to some corrupt customs officers, the leadtime will be shorter and the cost will be cheaper as compared to those who followed the rules of customs, the result of this survey revealed that it is the other way around - that it is better to follow the rules and regulations of the Bureau of Customs rather than not following them. More so, penalty will be given to the importers if found violating the rules and regulations with any existing PEZA/BOC rules such as losing the importers privilege to import the goods or worse automatic cancellation of their import licenses.

With the reform in public administration of BOC, the semiconductor and electronics industry is now pushed to strengthen their importation processes by doing what is right and by changing their mindset to decline facilitation. With the use of BOC's full process automation, it is eyed to minimize if not totally eradicate officer intervention/facilitation, queues and choke points, and remote lodgment facilities. With this, the Philippine Economic Zone Authority can expect ease of doing business resulting to more investors and more jobs for Filipino people.

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