

CUSTOMS AND LOGISTICS ADVOCACY PAPER 2022



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 through offering a wide range of consultancy services and by fostering connections between companies, organizations, and individuals with existing or potential business ties to 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 views 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 2022 edition of the ECCP Advocacy Papers features issues and recommendations developed after extensive discussions among members of the ECCP sector committees, consultations and meetings with representatives from the Philippine Government, and other stakeholders. Information gathered from organizing events that cover relevant topics, 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 were also taken into consideration upon writing.

Further, the recommendations provided in each paper were primarily based on the discussions during the quarterly sector committee meetings. The ECCP Advocacy Team carefully examined each issue and advocacy recommendation in close collaboration with the sector committee leaders and members to make sure they were in line with European business interests and priorities. Once the Advocacy Team had finalized the first draft of each sector paper, it was then disseminated to the Committee members and other important stakeholders for consultation. This allowed for the collection of input that would later be used to create the final draft of the papers.

The assessment of the status of each recommendation included in 2021 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

I am pleased to present the latest set of the European Chamber of Commerce of the Philippines' (ECCP) Advocacy Papers. This features an overview of the country's current business landscape and industry-specific challenges identified by the Chamber's sector committees. More importantly, the papers put forward constructive policy recommendations for strengthening European-Philippine economic relations and promoting sustainability.

We have witnessed uncertainties and concerns arising from the Russia-Ukraine crisis, inflationary pressures, and disruptions in the global supply chain, among others. Nevertheless, we have seen significant progress such as the easing of COVID-19 restrictions, increased mobility for businesses and consumers, as well as solid headways in boosting business confidence and the country's position as a competitive destination for trade and investments. We are optimistic that we will see positive outcomes from the passage of game-changing economic reforms such as the amendments to the Public Services Act, the Retail Trade Liberalization Act, and the Foreign Investment Act. These will undoubtedly usher in foreign direct investments and create more jobs for Filipinos. Furthermore, for the year 2022, multilateral agencies have expressed optimism for the Philippines with an estimated 6.0% and 6.5% growth rate by the World Bank and the Asian Development Bank, respectively.

The ECCP seeks to continue to maximize the opportunities brought about by these recent socioeconomic developments. This year's set of ECCP Advocacy Papers is our contribution to addressing some of the remaining challenges to realize the potential of the European-Philippine economic ties as well as advance sustainable development. Lastly, I would like to extend my sincerest thanks to our Committee leaders, member companies, and the ECCP team who supported the completion of this publication. The ECCP is committed to working with the European-Philippine stakeholders in navigating this new era of progress, possibilities, and partnerships.

Mr. Lars Wittig
ECCP President



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 However, the onset of the unprecedented COVID-19 pandemic has resulted in a drastic decline of economic activity around the world. The Philippines has not been spared from the economic effects of the pandemic. The country's growth collapsed, with a negative growth rate of 9.6% in terms of Growth Domestic Product (GDP), in 2020 (Table 1). Among its neighboring countries in the Association of Southeast Asian Nations (ASEAN), the Philippines was ranked 10th in terms of Gross Domestic Product (GDP) growth rate (Table 1). Ranked last, the Philippines appears to be the Southeast Asian economy most affected by the pandemic in 2020.

Table 1. ASEAN GDP Year-on-Year Growth Rates, 2020 and 2021 (% per year)

Country	2020	2020 ranking	2021	2021 ranking
Brunei Darussalam	1.1	3rd	-1.5	9th
Cambodia	-3.1	6th	3	5th
Indonesia	-2.1	5th	3.7	3rd
Lao People's Dem. Rep.	-0.5	4th	2.3	7th
Malaysia	-5.6	8th	3.1	4th
Myanmar	3.3	1st	-18.4	10th
Philippines	-9.6	10th	5.6	2nd
Singapore	-5.4	7th	7.6	1st
Thailand	-6.1	9th	1.6	8th
Vietnam	2.9	2nd	2.6	6th

Asian Development Bank. Asian Development Outlook 2022²

Nonetheless, in 2021, the Philippines ranked second among the ASEAN countries in terms of growth rates. Growth was buoyed by robust private domestic demand, including a dramatic increase in investment in the second quarter of 2021 and a steady rise in household final consumption expenditure³.

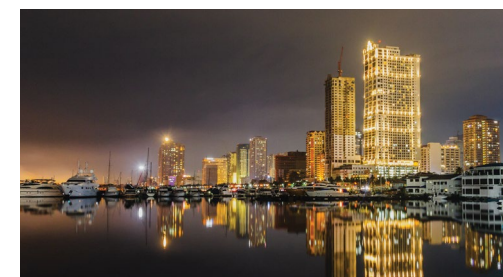
Furthermore, for the year 2022, multilateral agencies have expressed optimism for the Philippines with an estimated 6.0% and 6.5% growth rate by the World Bank and the Asian Development Bank, respectively. A strong rebound in domestic demand with the easing of COVID-19 mobility restrictions in the country will support robust growth for the Philippine economy in 2022 amidst the Russia-Ukraine conflict, inflationary pressures and disruptions in global supply chains.

The growth projection for 2023 is at 5.8% and 6.3% by the World Bank and ADB, respectively. This is attributed to monetary policy tightening and accelerating inflation affecting domestic demand.

Additionally, the annual preliminary figures show that the country's employment rate rose from 89.7% in 2020 to 92.2% in 2021, with the services sector accounting for 58.1% share, followed by the agriculture sector with 22%, and the industry sector with 19.9%⁴. As of writing, the country's unemployment rate decreased to 5.2 percent in July 2022 from 7.2 percent in the same period last year.⁵

On the other hand, inflationary pressures have been widely felt. As of writing, inflation in the Philippines heated up to 6.9 percent in September 2022 from 6.3 percent in July, according to the Philippine Statistics Authority. This was mainly driven by faster rate of increases in prices of foodstuff as well as electricity and housing.⁶

In terms of the country's Foreign Direct Investments (FDI), the BSP officially recorded USD 10.518 billion net inflows for 2021. Majority of the equity capital placement came from Singapore (USD 526.69 million), Japan (USD 257 million), USA (USD 73.60 million), Germany (USD 29.20 million), and Hong Kong (USD 23.45 million)⁷. In the same year, top European FDI sources are include Germany (USD 32.94 million), United Kingdom (USD 15.77 million), Sweden (USD 6.24 million), France (USD 4.43 million) and Spain (USD 4.34 million). More recently, total FDI net inflows from January to June 2022 reached USD 4.64 billion, an increase of 3% over the same period last year. Specifically, the top source country is **Singapore** with USD 526.69, followed by **Japan** (USD 257), **USA** (USD 73.60), **Germany** (USD 29.20), and **Hong Kong** (USD 23.45).



	Jan-June 2022	Jan-June 2021	2021	2020
Globally	USD 4.64 billion (+3.07% year-on-year increase)	USD 4.50 billion	USD 12.41 billion	USD 6.82 billion
Europe (both EU and non-EU states)	USD 62.54 million (+53% year-on-year increase)	USD 40.87 million	USD 48.08 million	USD 326.47 million

⁴ Philippines Statistics Authority. Percent distribution of employed persons by major industry group July 2020 and July 2021. Retrieved from <https://psa.gov.ph/statistics/survey/labor-and-employment/labor-force-survey/tab1>

⁵ National Economic and Development Authority (September 2022). Ph Records Lowest Unemployment Rate Since Covid-19 Onset—Neda. Retrieved from <https://neda.gov.ph/ph-records-lowest-unemployment-rate-since-covid-19-onset-neda/#:~:text=As%20reported%20by%20the%20Philippine,Labor%20Force%20Survey%20since%202005.>

⁶ <https://psa.gov.ph/press-releases/id/168188>

⁷ Bangko Sentral ng Pilipinas. Net foreign direct investment flows (BPM6), by country. Retrieved from https://www.bsp.gov.ph/Statistics/External/tab10_fdc.aspx. CUSTOMS AND LOGISTICS

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

² Asian Development Bank (April 2022). Asian Development Outlook 2022. Retrieved from <https://data.adb.org/dataset/asian-development-outlook-ado-2022-statistical-appendix-tables>

³ World Bank (June 2022). Philippines economic update 2022 edition. Retrieved from <https://documents1.worldbank.org/curated/0/099325006072264961/pdf/P177408091735101c0b25405cf39f312c86.pdf>.

The total external trade of the country in terms of goods was recorded at USD 192.532 billion in the year 2021, representing a growth of 24.2% compared to the USD 155.02 billion recorded during 2020, but most importantly an augmentation of 10 billion compared to the 2019, pre-pandemic data. Among the major trading partners are the People's Republic of China, Japan, and the USA⁸. The European Union (EU) followed as the fourth largest trading partner, accounting for 7.9% of the country's total trade in 2021⁹. Meanwhile, as for the Philippines' bilateral trade with the EU member countries, Germany ranked as the top trading partner, with a total of trade of USD 4.985 billion. Likewise, in 2020, Germany ranked as the highest trading partner with a total trade of USD 4.343 billion.¹⁰

Furthermore, in the 2022 World Competitiveness Ranking compiled by the Institute for Management Development (IMD), the Philippines ranked 48th out of 63 countries, climbing four spots from the previous ranking. Specifically, the report notes that the country moved up in two of the factors: Economic Performance rose 4 places to 53rd; Infrastructure climbed 2 spots to 57th. Meanwhile, the Philippines' ranking for government Efficiency slipped three more spots to 48th, and public finance fell six places to 51st.

Nevertheless, we have seen significant progress such as the easing of COVID-19 restrictions, increased mobility for businesses and consumers, as well as solid headways in boosting business confidence and the country's position as a competitive destination for trade and investments. We are optimistic that we will see positive outcomes from the passage of game-changing economic reforms such as the amendments to the Public Services Act, the Retail Trade Liberalization Act, and the Foreign Investment Act. These will undoubtedly usher in foreign direct investments and create more jobs for Filipinos.

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⁸ Philippines Statistics Authority. Highlights of the 2021 annual final international merchandise trade statistics of the philippines . Retrieved from <https://psa.gov.ph/content/highlights-2021-annual-final-international-merchandise-trade-statistics-philippines>, table 1 and 5.

⁹ European commission. Countries and Regions: The Philippines. Retrieved from https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/philippines_en.

¹⁰ Department of trade and Industry of the Philippines. Philippines merchandise total trade, historical trend. Retrieved from <http://www.tradelinephilippines.dti.gov.ph:8080/total-trade>.

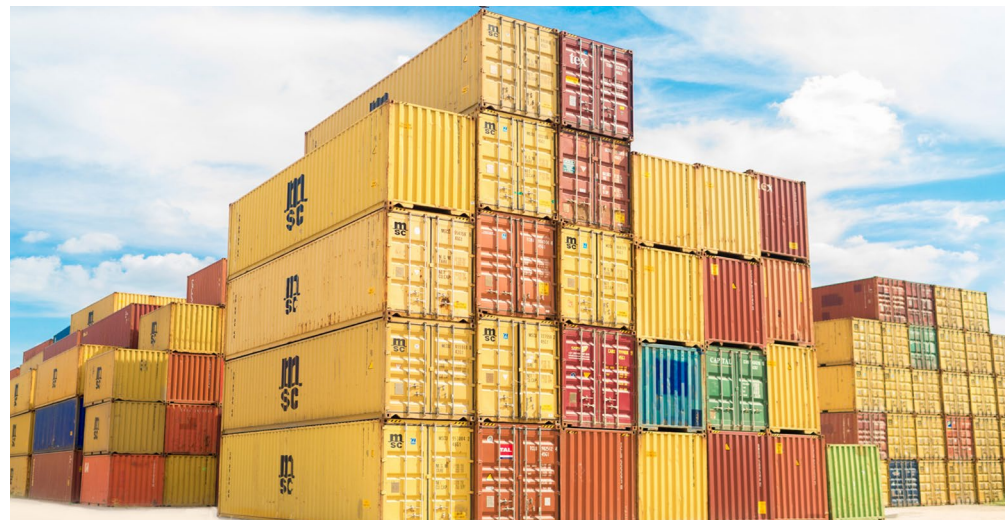
INTRODUCTION

21st-century globalization and the COVID-19 pandemic drastically affected each industry. As economies are reopening, it is pivotal to understand the effect of COVID-19 and the other challenges in the transportation and logistics sectors.

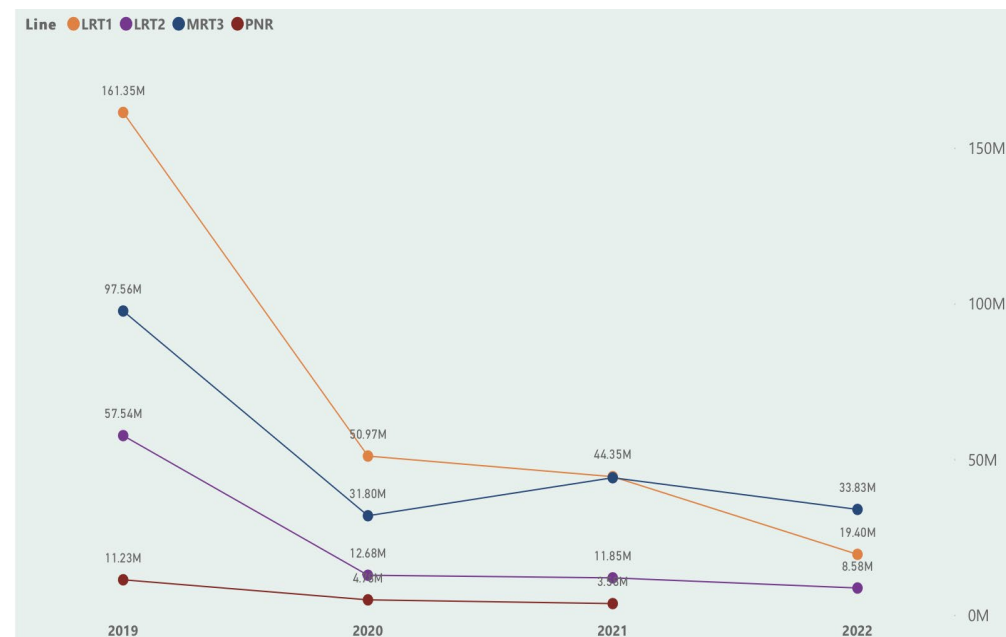
	NUMBER OF CITIES	LENGTH OF INFRASTRUCTURE (KM)	NUMBER OF STATIONS	NUMBER OF CARRIAGES	ANNUAL RIDERSHIP 2019* (MILLION)
Asia-Pacific	84	10,118	6,824	75,600	30,537
Eurasia	16	909	593	10,250	5,029
Europe	46	3,028	3,032	25,850	11,021
Latin America	19	1,027	842	9,900	6,245
MENA	10	566	404	3,700	1,721
North America	18	1,573	1,269	13,900	3,704
TOTAL	193	17,221	12,964	139,200	58,257

Figure 1. Key indicators per region, 2020
 * Ridership data provided is for 2019 instead of 2020, as the latter was heavily impacted by COVID-19 and so provides a distorted picture. The 2020 ridership data is available in this Brief.

COVID-19 has undeniably led to global disruptions, which included the transportation sector. According to the Metro Statistics Brief of the International Association for Public Transportation (UITP), in 2020, global metro ridership fell by 40% in 2020 compared to 2019. No region was spared, with the average decrease to 32% in Asia-Pacific and 63% in North America.¹



1 International Association for Public Transportation (UITP). (2021). World Metro Figure 2021. 1-2. Retrieved from: <https://cms.uitp.org/wp/wp-content/uploads/2022/05/Statistics-Brief-Metro-Figures-2021-web.pdf>



Source: Department of Transportation (DOTr)²

In the Philippine context, according to the Department of Transportation (DOTr), public transport such as the Manila Light Rail Transit System (LRT), Manila Metro Rail Transit System Line 3 (MRT), and Philippine National Railways (PNR) was hit drastically by the COVID-19 pandemic. In terms of government priorities, the Duterte Administration made transportation one of the key focus areas of the Build, Build, Build (BBB) Program. According to the International Trade Administration, the BBB Program of the Duterte Administration has 76 transport and mobility projects (Table 1), wherein 35 are being or will be funded purely by development aid, and 12 being financed by government funds. There are 24 Public-Private Partnership (PPP) projects, 20 of which are unsolicited proposals.³



2 Department of Transportation. (2022). DOTr Railway Sector. Retrieved from: <https://dotr.gov.ph/data-sets/railways-sector-d1.html>

3 International Trade Administration. (2022). Philippines - Courty Commercial Guide. Retrieved from: <https://www.trade.gov/country-commercial-guides/philippines-transport-infrastructure>

Table 1: IFPs by Sector

SECTOR	PROJECT COUNT	COST (in PhP Billion)
Transportation and Mobility	76	4,273.4
Urban Development	12	156.4
Water Resources	10	84.9
ICT	8	106.0
Health	4	46.4
Power and Energy	2	20.0
Total	112	4,687.2

Source: NEDA, cited by the Senate of the Philippines⁴ (For complete list of project Investment Coordination Committee (ICC) / NEDA Board⁵

Table 2: Disbursements of DPWH and DOTr (in PHP Million)

	2016	2017	2018	2019	2020	Jan – Sept 201
DPWH	311,808	225,857	298,481	38,895	145,251	273,681
Disbursement Rate	73.2%	36.3%	42.9%	42.5%	31.2%	49.9%
DOTr	48,956	27,130	30,510	271,087	42,365	30,369
Disbursement Rate	79.2%	39.2%	40.7%	56.4%	37.2%	49.3%

Source: Statement of Appropriations, Allotments, Obligations, Disbursements and Balances (SAAODB), DBM

Notwithstanding the successes in the implementation of several projects under the flagship BBB Program, the Philippine transportation sector may be bound for further improvement through the maximization of resources. According to the 2022 report of the Philippine Senate, the Department of Public Works and Highways (DPWH) and the Department of Transportation (DOTr), lead agencies for the transportation sector of the Build, Build, Build Program, exhibited low disbursement rates, with average disbursement rates of 38.2% and 43.4%, respectively.⁶ Along with the low disbursement rates, according to the report provided by the Senate of the Philippines, only fifteen projects have been completed as of January 3, 2022, seven of which were part of the previous lists approved in 2017 to 2020.⁷ Withal, as of January 2022, 77 out of 112 projects are ongoing, while the other 27 are still in the pipeline (Table 3).

⁴ Senate of the Philippines. (2022). Update on the Flagship Projects of the Build, Build, Build Program: At a glance. Retrieved from: https://legacy.senate.gov.ph/publications/SEPO/SEPO_AAG%20on%20Infrastructure%20Flagship%20Projects_22Feb2022.pdf

⁵ National Economic and Development Authority. (N.D). Investment Coordination Committee (ICC) / NEDA Board Approved Projects (Duterte Administration): July 2016 to March 2022. Retrieved from: <https://neda.gov.ph/wp-content/uploads/2022/03/ICC-NB-Approved-Projects-as-of-21-March-2022-NEDA-website.pdf>

⁶ Senate of the Philippines. (January 2022). Update on the Flagship Projects of the Build, Build, Build Program At A Glance. Retrieved from: https://legacy.senate.gov.ph/publications/SEPO/SEPO_AAG%20on%20Infrastructure%20Flagship%20Projects_22Feb2022.pdf

⁷ Senate of the Philippines. (January 2022). Update on the Flagship Projects of the Build, Build, Build Program At A Glance. Retrieved from: https://legacy.senate.gov.ph/publications/SEPO/SEPO_AAG%20on%20Infrastructure%20Flagship%20Projects_22Feb2022.pdf

Table 3: Table 1: IFPs by Status as of January 3, 2022

STATUS	PROJECT COUNT	COST (in PhP Billion)
Completed	8	94.6
Ongoing construction	77	3,506.3
In the pipeline	27	1,086.3
Total	112	4,687.2

Source: DPWH cited by the Senate of the Philippines⁸

RECENT REFORMS AND INDUSTRY DEVELOPMENTS

The ECCP notes the following reforms and developments in the transportation and Customs sector:

RECENT REFORM AND DEVELOPMENTS ON TRANSPORTATION

- On July 30, 2022, President Ferdinand “Bongbong” Marcos, Jr. vetoed the House Bill No. 9030 and Senate Bill No. 1077 that would have created the Philippine Transportation Safety Board.⁹
- In June 2022, The Department of Transportation (DOTr) further intensified its Maritime Safety Capability Improvement Project.¹⁰
- In July 2022, the new DOTr aims to transform the transportation sector will ensure to provide “accessible, affordable, comfortable, and safe transport service throughout the country” through the use of the country’s transport systems.¹¹
- The Department of Public Works and Highways (DPWH) and Japan International Cooperation Agency (JICA) signed the Record of Discussion last May 2022. The DPWH will be assisted by Japanese experts in enhancing the capabilities of DPWH engineers with the view of applying the latest technologies in the Philippines to address road disasters in hazard-prone mountain areas.¹²

⁸ Senate of the Philippines. (2022). Update on the Flagship Projects of the Build, Build, Build Program: At a glance. Retrieved from: https://legacy.senate.gov.ph/publications/SEPO/SEPO_AAG%20on%20Infrastructure%20Flagship%20Projects_22Feb2022.pdf

⁹ Inquirer. (30 July 2022). Veto f Bill creating transport and safety board “unfortunate”, says Poe”. Retrieved from: <https://newsinfo.inquirer.net/1637786/veto-of-bill-creating-transport-safety-board-unfortunate-says-poe>

¹⁰ Department of Transportation. (N.D). DOTr Beefs up maritime safety capability improvement with commissioning of PCG’s BRP Melchora Aquino. Retrieved from: <https://dotr.gov.ph/55-dotnews/4426-dot-beefs-up-maritime-safety-capability-improvement-with-commissioning-of-pcg-s-brp-melchora-aquino.html>

¹¹ Manila Bulletin. (01 July 2022). New DOTr chief seeks to transform transport sector. Retrieved from: <https://mb.com.ph/2022/07/01/new-dotr-chief-seeks-to-transform-transport-sector/>

¹² Department of Public Works and Highway. (19 May 2022). DPWH-JICA ink Agreement on the Road Disaster Prevention and other countermeasure on the Mountainous Roads in PH. Retrieved from: <https://www.dpwh.gov.ph/dpwh/news/26456Disasder>

RECENT REFORM AND DEVELOPMENTS ON CUSTOMS

- In July 2022, issued the Customs Administrative Order (CAO) for the accreditation of the importers, that serve as a compliance pursuant to Section 204 in relation to Section 1226 of the Republic Act No. 10863, otherwise known as “An Act Modernizing the Customs and Tariff Administration”. The CAO 07 2022 covers all importers that will transact with the BOC for importation, movement, and clearance of goods.¹³
- In the 18th Congress, House Bill No. 10575 was approved by the House in January 2022, and was transmitted to the Senate in February 2022. This was a consolidation of House Bill Nos. 4316 and 4462. The former sought 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. The latter, on the other hand, aimed 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.¹⁴
- In April 2022, the Bureau of Customs launch the **Electronic Customs Baggage and Currency Declaration System (eCBCD)**, which seeks to provide guidelines on the customs clearance process for all travelers and crew members using the said system.¹⁵
- The Bureau of Customs, together with the United Nations ESCAP, launched the *Philippines’ Readiness Assessment for Cross-Border Paperless Trade*, which is composed of four (4) areas that provide a benchmark of the country’s legal and technical preparedness in identifying specific pilot projects, capacity building, and technical assistance needs.¹⁶
- Despite the pandemic, the Bureau of Customs was able to surpass its targeted collection by collecting Php 11 billion. Customs Commissioner Rey Leonardo Guerrero attributed the positive response to improved valuation, intensified collection efforts, measures preventing revenue leakage, and the country’s recovering economy.¹⁷

ADVOCACY RECOMMENDATIONS

TRANSPORTATION ADVOCACY RECOMMENDATIONS

1. **Enact laws to restructure the Civil Aviation Authority of the Philippines (CAAP) into a regulatory body, including the amendments of the Civil Aviation Authority Act of 2008, the establishment of the Philippine Airports Authority, and the creation of the Philippine Transportation Safety Board**

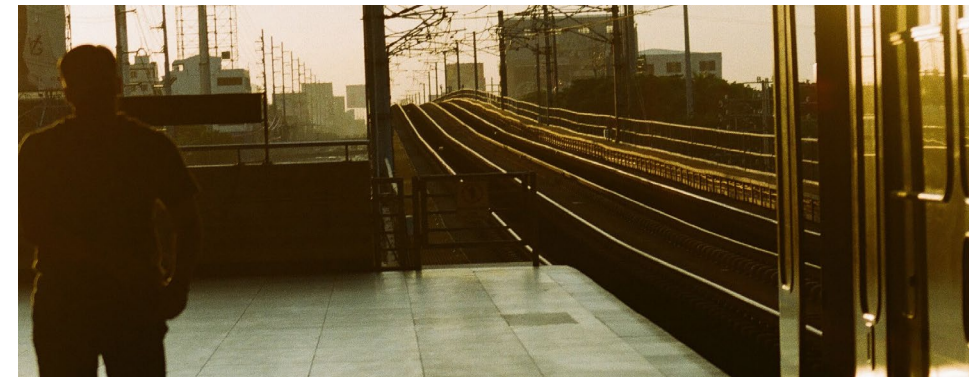
The ECCP and its Aviation Committee support the move to establish an independent agency focused on the development of Philippine airports through the Philippine Airports Authority (or Corporation) with the aim of providing a unified approach to the operations and maintenance of domestic and international airports. The airport authority or corporation will be an independent body that will manage the existing functions of the CAAP of planning, developing, and maintaining all airports, as

well as regulating privatized airports. The separation of the regulator and operator within CAAP can be achieved through the creation of such independent authority. Furthermore, the privatization of CAAP and having the Philippine Airport Corporation/Authority (PAA) will also bolster modernization in the aviation industry.

In relation to the foregoing, the Chamber backs the enactment of the CAAP amendments to streamline its existing functions as operator and investigator, allowing the agency to focus on its role as a safety regulator. Turning CAAP into a purely regulatory body is necessary because currently, CAAP serves as the inspector and the implementer of the safety and security of airports and aerospace, affecting the credibility of its functions. We believe that such a move will further strengthen CAAP and result in a more efficient airport industry.

As the Philippine economy and transportation sector expand at a rapid pace, a national transportation safety board independent of the Department of Transportation becomes more crucial than ever. With this, the ECCP and its partners at the Joint Foreign Chambers have been supporting the creation of a Philippine Transportation Safety Board, which will be able to prevent and minimize catastrophic transportation accidents that have claimed the lives of far too many Filipinos and will improve the overall transportation safety for the Philippines. Following the recent veto of the PTSB bill by the Office of the President, the Chamber remains committed to lobbying the government with its partners and other stakeholders to continue pushing for the creation of a non-regulatory and independent agency primarily responsible for the conduct of impartial investigation on transportation-related accidents and incidents.

The ECCP strongly believes that the passage of the PTSB bill would strengthen good governance and ensure orderliness. Presently, various agencies handle different sectors of transportation with regard to accident investigations. The country has no single, autonomous authority in charge of investigating transportation-related incidents. As regulators, operators, and investigators; transportation authorities conduct overlapping and contradictory duties. The Civil Aviation Authority of the Philippines (CAAP) has authority over aviation disasters. Sea mishaps are under the Maritime Industry Authority, which forms inquiry boards to investigate major maritime disasters. With respect to road accidents involving public utility vehicles, the Land Transportation Franchising and Regulatory Board (LTFRB) has jurisdiction. Road accidents may also be investigated by the Philippine National Police (PNP), the Land Transportation Office (LTO), and the Metro Manila Development Authority (MMDA). As such, we believe that the PTSB will further strengthen industry players and result in a more efficient transportation sector in the country. It is undeniable that the competence of such a safety board is critical to the country’s continuing, sustainable economic growth.



¹³ Bureau of Customs. (July 2022). CAO 07 2022. Retrieved from: <https://customs.gov.ph/wp-content/uploads/2022/07/CAO-07-2022-Accreditation-of-Importers.pdf>

¹⁴ House of Representatives. (30 April 2021). TWG to consolidate Bills Regulating International Shipping Coast. Retrieved from: <https://www.congress.gov.ph/photojournal/zoom.php?photoId=2956>

¹⁵ Bureau of Customs. (2022). BOC implements Electronic Customs Baggage and Currency Declaration System. Retrieved from: https://customs.gov.ph/boc-implements-electronic-customs-baggage-and-currency-declaration-system/?fbclid=IwAR3c23jVWi2ovREb5ItO4sVAX9HBCOVs9C_Hr_Ccz17SDpUvqNKMEF6evW8o

¹⁶ Bureau of Customs. (2022). BOC and United Nations ESCAP Launch the Readiness Assessment for Cross-Border Paperless Trade for the Philippines. Retrieved from: <https://customs.gov.ph/boc-and-united-nations-escap-launch-the-readiness-assessment-for-cross-border-paperless-trade-for-the-philippines/>

¹⁷ Philippine News Agency. (2022). BOC surpasses May target collection by P11-B. Retrieved from: <https://www.pna.gov.ph/articles/1175719>

2. High Shipping Costs

Table 5. Domestic shipping cost in the Philippines, Indonesia, and Malaysia

Origin	Destination	Cost				Destination port domestic throughput (MT)	Distance (NM)	Freight cost per NM		Number of operators
		Door to door (local currency)	Door to door (USD)	Port to port (local currency)	Port to port (USD)			Door to door	Port to port	
Malaysia										
Kuala Lumpur	Kuching	5,126	1,589	3,626	1,124	9,188,635	653	2.43	1.72	NA
Kuala Lumpur	Kota Kinabalu	5,756	1,784	3,976	1,233		1005	1.78	1.23	NA
Kuala Lumpur	Sandakan	6,176	1,915	4,576	1,419		1250	1.53	1.13	NA
								1.91	1.36	NA
Philippines										
Manila	Cebu	36,000	827	26,150	600	18,169,471	404	2.05	1.49	4
Manila	Cagayan do Oro	38,000	873	28,495	654	6,171,957	504	1.73	1.30	5
Manila	Davao	44,000	1,010	33,320	765	4,081,487	829	1.22	0.92	5
Manila	Iloilo	42,000	964	33,320	765	3,516,048	355	2.72	2.15	4
Average								1.93	1.47	
Indonesia										
Jakarta	Pontianak	12,250,000	1,065	5,000,000	435	46,546,000	420	2.54	1.04	NA
Jakarta	Makassar	9,500,000	826	5,300,000	461	11,335,000	762	1.08	0.60	NA
Jakarta	Banjarmasin	10,500,000	913	6,300,000	548	7,642,000	579	1.58	0.95	NA
Jakarta	Medan	9,500,000	826	6,000,000	522	7,303,000	861	0.96	0.61	NA
Jakarta	Balikpapan	12,250,000	1,065	5,800,000	504	2,841,000	765	1.39	0.66	NA
Average								1.51	0.77	NA

Source: World Bank Group staff inquiries of various shipping firms.

In the 2014 study conducted by the World Bank presented that the Philippine shipping cost is much higher than Indonesia and slightly higher than Malaysia.¹⁸ Consequently, the shipping cost is seen to drive inflation in countries.

Furthermore, in 2021, Philippine Ports Authority reported that the shipping container increased its price from USD 2,000 in November 2020 to USD 9,000 for one 40-foot shipping container.¹⁹ The surge in the shipping cost, apart from the destination charges, creates a negative ripple effect on the Philippine economy. Furthermore, IMF also estimates when freight rates double, inflation picks up by about 0.7 percentage point which implies that the increase in shipping costs observed in 2021 could increase inflation by about 1.5 percentage points in 2022.²⁰

As the country recovers from the effects of the pandemic, external factors such as the Russia-Ukraine conflict exacerbates supply chain disruption including the high rate of shipping costs. Shipping costs may rise as much as 25% as global oil prices continue to skyrocket amid the Ukraine-Russia conflict.²¹ Therefore, the ECCP continues to submit the following recommendation to the Philippine government, especially on the subject of shipping costs and destination charges. .

- o **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)**
- o **Strengthen and appoint MARINA to have primary jurisdiction in 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 are few 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 move of the 18th Congress to address concerns and regulate international shipping lines. In principle, the ECCP advocates for the filing of legislation under the 19th Congress that will promote the following: (1) 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.

Furthermore, 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.

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

18 World Bank. (2014). Enhancing Domestic Shipping. Retrieved from: <https://openknowledge.worldbank.org/bitstream/handle/10986/24800/EnhancingDomesticShipping.pdf?sequence=1&isAllowed=y>

19 Philippine Star. (2021). Soaring shipping rates to raise import costs. Retrieved from: <https://www.philstar.com/business/2021/03/01/2080985/soaring-shipping-rates-raise-import-costs>

20 Business World. (2022). Shipping costs seen to drive inflation. Retrieved from: <https://www.bworldonline.com/top-stories/2022/03/31/439300/shipping-costs-seen-to-drive-inflation/>

21 Business World. (2022). Shipping costs may rise by as much as 25%. Retrieved from: <https://www.bworldonline.com/top-stories/2022/03/08/434488/shipping-costs-may-rise-by-as-much-as-25-industry-group-warns/>

- **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 a prevailing public perception that in order to avoid the 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 the 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
<p>Section 2 - General Provision Section 2.2</p> <p>The accreditation of the importer or broker may be preliminarily suspended pending proper administrative proceedings to ensure border protection, suppress all forms of smuggling and other frauds committed against the collection of lawful revenues.</p>	<p>The temporary suspension of a maximum period of 90 days could have a significant impact on the importers’ or brokers’ other shipments not covered with any derogatory report or suspected violation of the Customs laws, rules, and regulations.</p> <p>While the CMO provides 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:</p> <p>(1) It will only cover shipments in transit or which arrived at ports prior to preliminary suspension;</p> <p>(2) The request for continuous processing will need to be filed at the legal service for resolution and approval of the Customs Commissioner; and</p> <p>(3) 100% examination of the goods regardless of selectivity screen to be conducted with cost to be incurred by the requestor.</p>
<p>Section 4 - Grounds for Preliminary Suspension</p> <p>Section 4.3</p> <p>Other analogous circumstances, at the discretion of the Commissioner</p>	<p>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.</p> <p>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 it may have a certainly 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)</p>

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;

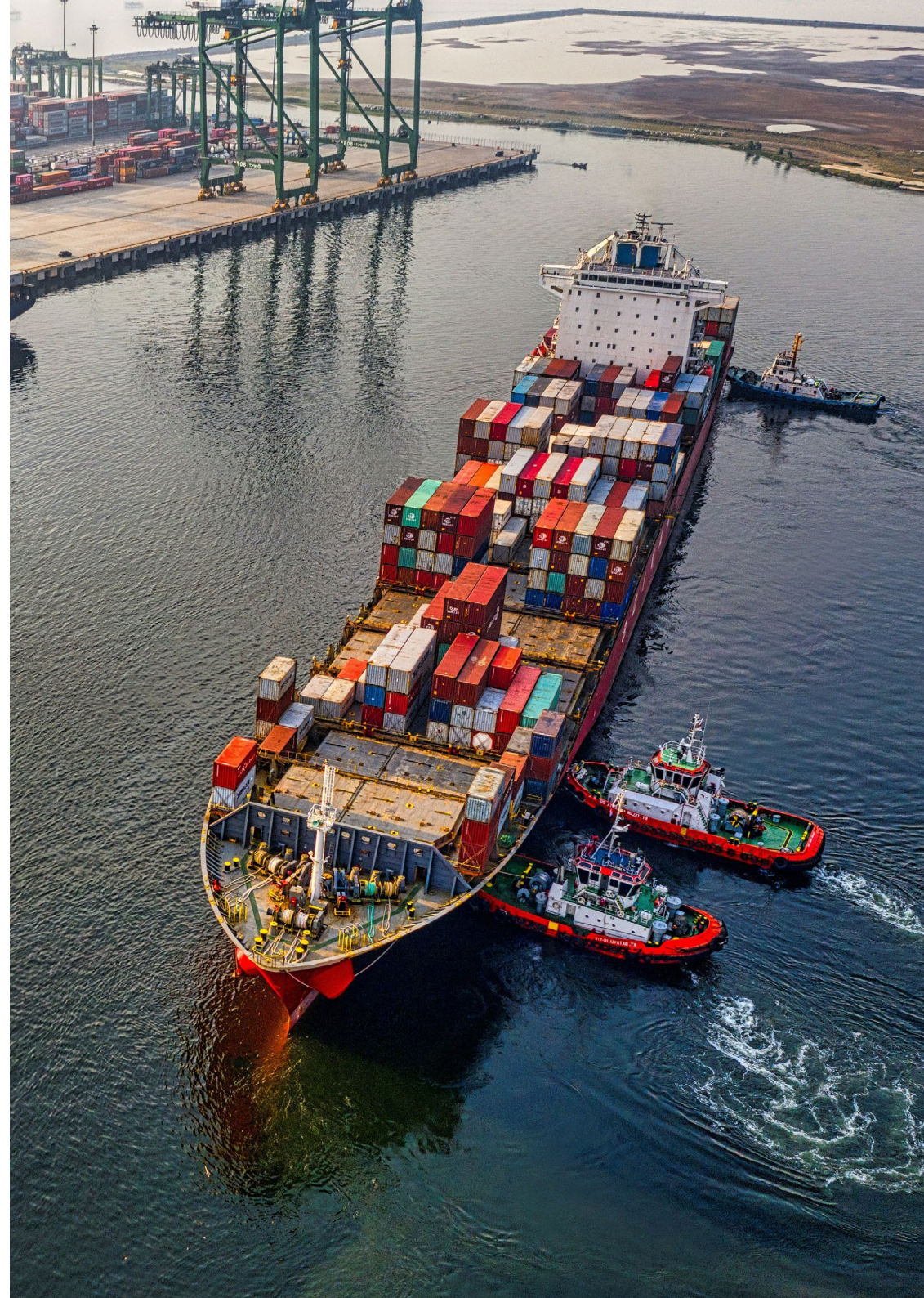
(d.) Excusable negligence in
protecting e2m password
from abuse and misuse; and

(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.**



ASSESSMENT OF 2021 RECOMMENDATION

ADVOCACY	RECOMMENDATION	COMPLETE	SOME PROGRESS	NO PROGRESS/RETROGRESSION
ON SHIPPING COSTS & DESTINATION CHARGE	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)		In the 18th Congress, House Bill No. 10575 was approved by the House in January 2022 and was transmitted to the Senate in February 2022. This was a consolidation of House Bill Nos. 4316 and 4462 . The former sought 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. The latter, on the other hand, aimed to appoint MARINA to have primary jurisdiction over the promotion of fair and transparent destinations and other shipping charges among forwarders and agents of international shipping lines. ²²	
	Strengthen and appoint MARINA to have primary jurisdiction in the promotion of fair and transparent destinations and other shipping charges among forwarders and agents of international shipping lines		In the 18th congress, on September 9, 2019 the House Bill 4462, was substituted by HB10575	No progress has been noted on the HB 10575 otherwise known as <i>"AN ACT ENHANCING THE COMPETITIVENESS OF PHILIPPINE MARITIME TRADE BY STRENGTHENING THE OVERSIGHT FUNCTIONS OF RELEVANT GOVERNMENT AGENCIES OVER THE IMPOSITION OF SHIPPING CHARGES BY INTERNATIONAL SHIPPING LINES AND INSTITUTIONALIZING MECHANISMS FOR THE EFFICIENT MOVEMENT OF GOODS"</i> remains pending in the congress.
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.			No progress has been noted.

²² House of Representatives. (30 April 2022). TWG to Consolidate Bills Regulating International Shipping Cost. Retrieved: <https://www.congress.gov.ph/photojournal/zoom.php?photoId=2956>


ADVOCACY	RECOMMENDATION	COMPLETE	SOME PROGRESS	NO PROGRESS/RETROGRESSION
<p>On Customs Memorandum Order No. 12-2021's</p>	<p>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.</p> <p>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.</p>	<p>-</p>		<p>No progress has been noted on CMO No. 12-2021.</p>
<p>NATIONAL SINGLE WINDOW (NSW) AND THE ASEAN SINGLE WINDOW (ASW)</p>	<p><i>Fully operationalize the National Single Window (NSW) and integrate it with the ASEAN Single Window (ASW).</i></p>	<p>In 2021, the Bureau of Customs stated that the Philippines is now exchanging Association of Southeast Asian Nations (ASEAN) customs declaration document (ACDD) using the live environment of the ASEAN Single Window (ASW).²³</p>		


²³ Port Calls. (24 December 2021). PH ASEAN live electronic exchange of customs declaration document. Retrieved from: <https://www.portcalls.com/ph-joins-asean-live-electronic-exchange-of-customs-declaration-document/>







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