



Technical Report

Philippine Compliance with the Revised Kyoto Convention

by Parayno Consultancy Services

Prepared for

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EMERGE Preface

This report is the result of technical assistance provided by the Economic Modernization through Efficient Reforms and Governance Enhancement (EMERGE) Activity, under contract with the CARANA Corporation, Nathan Associates Inc. and The Peoples Group (TRG) to the United States Agency for International Development, Manila, Philippines (USAID/Philippines) (Contract No. AFP-I-00-00-03-00020 Delivery Order 800). The EMERGE Activity is intended to contribute towards the Government of the Republic of the Philippines (GRP) Medium Term Philippine Development Plan (MTPDP) and USAID/Philippines' Strategic Objective 2, "Investment Climate Less Constrained by Corruption and Poor Governance." The purpose of the activity is to provide technical assistance to support economic policy reforms that will cause sustainable economic growth and enhance the competitiveness of the Philippine economy by augmenting the efforts of Philippine pro-reform partners and stakeholders.

By letter dated 25 November 2005, Fernando P. Cala II, Executive Director of the Philippine Export Development Council (EDC), requested assistance from EMERGE and the Partnership and Advocacy for Competitiveness and Trade (PACT), which is a grant project implemented for USAID by the DLSU-Angelo King Institute for Economic and Business Studies in partnership with Philippine Exporters Confederation, Inc. (PhilExport), for research and advocacy about Philippine compliance with the Revised Kyoto Convention (RKC), which was to enter into force on February 3, 2006. PACT and EMERGE engaged the Parayno Consultancy Services for this purpose in June 2006.

The views expressed and opinions contained in this publication are those of the authors and are not necessarily those of USAID, the GRP, EMERGE or the latter's parent organizations.

**PROJECT : RESEARCH AND ADVOCACY SUPPORT FOR TRADE FACILITATION: PHILIPPINE COMPLIANCE
WITH THE REVISED KYOTO CONVENTION (“RKC”)**

**PROPOSED NATIONAL STRATEGY FOR PHILIPPINE COMPLIANCE TO
THE INTERNATIONAL CONVENTION ON THE SIMPLIFICATION AND
HARMONIZATION OF CUSTOMS PROCEDURES, OTHERWISE KNOWN AS
THE REVISED KYOTO CONVENTION (“RKC”)**

Submitted by:

PARAYNO CONSULTANCY SERVICES

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Abbreviation

AFTA	ASEAN Free Trade Agreement
AO	Administrative Order
APEC	Asian Pacific Economic Cooperation
ASEAN	Association of South East Asian Nations
ATA	
BOC	Bureau of Customs
BOI	Board of Investments
CAO	Customs Administrative Order
CCC	Customs Cooperation Council
CEPT	
CMBW	Customs Manufacturing Bonded Warehouse
CMO	Customs Memorandum Order
CO	Certificate of Origin
DOF	Department of Finance
DSWD	Department of Social Welfare and Development
EO	Executive Order
GRP	Government of the Republic of the Philippines
ICAO	
ICT	Information and Communication Technology
IFM	
IRR	Implementing Rules and Regulations
KC	International Convention on the Simplification and Harmonization of Customs Procedures or Kyoto Convention
KCMT	Kyoto Convention Management Team
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NAIA	Ninoy Aquino International Airport
NIRC	National Internal Revenue Code
PACT	Partnership and Advocacy for Competitiveness and Trade
PD	Presidential Decree
PEZA	Philippine Economic Zone Authority
PHILEXPORT	Philippine Exporters Confederation, Inc.
RA	Republic Act
RKC	Revised Kyoto Convention
SAD	Single Administrative Document
SARO	Special Allotment Release Order
Sec	Section
SITA	
TCCP	Tariff and Customs Code of the Philippines
TWM	Trade World Management
UN	United Nations
UNECE	
VASP	Value Added Service Provider
VAT	Value Added Tax
WCO	World Customs Organization
WTO	World Trade Organization

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PREFACE

In June 2006, the Partnership and Advocacy for Competitiveness and Trade (PACT) Project, a project being implemented by the DLSU-Angelo King Institute for Economic and Business Studies in partnership with Philippine Exporters Confederation, Inc. (PHILEXPORT), and the Economic Modernization through Efficient Reforms and Governance Enhancement (EMERGE) engaged the Parayno Consultancy Services for the project "Research and Advocacy Support for Trade Facilitation: Philippine Compliance with the Revised Kyoto Convention ("RKC"), hereinafter referred to as the "Project". The Project was in response to the need to identify a clear path on how the Philippines should respond to the RKC's imminent entry into force and to accelerate the pace and institutionalize the gains of trade facilitation and customs reforms and modernization, and involves, among others, the conduct of a study on the current status of Philippine compliance with the RKC.

The main deliverables of the Project are a draft National Strategy for RKC compliance as well as a workplan for the implementation of the National Strategy.

The Project Team, in coordination with the Philippine Bureau of Customs and concerned private sector groups undertook a gap analysis to ascertain the measures needed to make Philippine national legislation compliant with the RKC.

A pre-summit followed by a national summit was organized and held on 30 January 2007 and 5 February 2007 respectively to arrive at a National Strategy for RKC compliance. The draft was presented and subsequently adopted and endorsed by concerned private sector groups. Thereafter, it was presented to President Gloria Macapagal-Arroyo, through Secretary of Finance, Margarito V. Teves, during the 105th Founding Anniversary celebration of the Philippine Customs Service on 6 February 2007.

The Project Team wish to thank officials of the Bureau of Customs for their participation in the gap analysis as well as the pre-summit and the summit. We wish to express our gratitude especially to the following, without whom, the pre-summit and the summit would not have been successfully held:

- Bureau of Customs (BOC)
 - Deputy Commissioner Reynaldo Nicolas
 - Collector John Simon
 - Members of the Bureau of Customs Kyoto Convention Management Team who acted as Lead Shepherds
 - Officers of the Bureau of Customs who acted as lead facilitators in the pre-summit
- Philippine Exporters Confederation, Inc. (PHILEXPORT)
 - Dr. Ponciano Intal, Jr.
 - Gerardo Anigan
 - Jennifer Tan
- AIM Policy Center
 - Dr. Federico Macaranas
 - Rommella M. Denopol

We would also like to express our gratitude to the Project Proponents and Funders for giving Parayno Consultancy Services the opportunity for spearheading in this very important project that promises to upgrade significantly the global competitiveness of the country.

Our deepest gratitude to retired Customs Collector Manual B. Dionaldo who graciously welcomed all refused telephone calls and personal visits to discuss highly technical and legal issues in the course of the gap analysis. And who generously shared his knowledge and library of Customs laws, rules and regulations.

EXECUTIVE SUMMARY

Philippine Customs administrations, past and present, have implemented programs to simplify and harmonize Customs procedures even without having acceded to the World Customs Organization's ("WCO"), formerly the CCC, International Convention on the Simplification and Harmonization of Customs Procedure (Kyoto Convention).

Several of the reform measures introduced from 1992 to 1998 by Philippine Customs in its operation have in fact pre-dated some of the standards, transitory standards and recommended practices agreed upon in 1999 by the WCO countries when they completed the review of the KC and opened for accession of the RKC.

However, several of these reform measures were not sustained, partly because of the absence of a holistic framework that can serve both a legally binding guidepost and framework for action to harmonizing Philippine Customs procedures with the rest of the world.

Customs Administrations in Asian Pacific Economic Cooperation (APEC) and Association of South East Asian Nations (ASEAN) have long recognized the importance of such a guidepost and framework, and have committed as a group to reform and modernize their respective administrations along the standards and recommended practices of the RKC.

A guidebook for APEC Economies to assist them to become Contracting Parties to the RKC, entitled *The Revised Kyoto Convention: a Pathway to Accession and Implementation*, was issued. An important component of the guidebook is the examination of the gaps or differences between the country's national legislation and the RKC.

The gap analysis conducted by the Project would show that the country's national legislation is compliant to fifty five percent (55%) of the standards, transitory standards and recommended practices contained in the RKC, i.e., we can find in our national legislation specific provisions expressly complying with the said standards, transitory standards and recommended practices. However, a significant percentage all not reflected in the legislation. Fortunately, only sixteen percent (16%) of the provisions contained in the RKC requires an amendment of our law. Still other provisions of the RKC which may be important for facilitation of trade may, however, have an adverse impact on our country's other objectives, such as the collection of revenues and the prevention of smuggling and other Customs violations.

A national strategy for RKC compliance was therefore crafted that aims to immediately implement most of the trade facilitation standards, transitory standards and recommended practices of the RKC, while giving time for the Customs administration to put in place measures that will not erode Customs capacity to effectively enforce their other control objectives.

The national strategy proposed a schedule of acceptance and implementation of the RKC provisions. It proposed the immediate acceptance of the Body of the Convention, the General Annex, eight (8) Specific Annexes consisting of eighteen different chapters, while making an express reservation on 27 recommended practices contained in these chapters of the eight Specific Annexes recommended for acceptance. Furthermore, it proposed that further studies be conducted on 7 Chapters contained in four (4) Specific Annexes. A detailed discussion may be found in Annex "G".

The national strategy also includes a package of investment measures and proposals which are needed, not only to support the soonest accession of the Philippines to the RKC, but also to insure quality compliance to most if not all of the modern systems and method of the convention.

PROPOSED NATIONAL STRATEGY FOR PHILIPPINE COMPLIANCE TO THE INTERNATIONAL CONVENTION FOR THE SIMPLIFICATION AND HARMONIZATION

1.0 Introduction

1.1 The World Customs Organization (WCO)

The Customs Cooperation Council (CCC) which is the forerunner of the WCO, has since its inception in 1952, been working to develop modern principles that would buttress effective customs administrations. One of its major outputs is the 1973 Kyoto Convention (KC) which came into force in 1974. The WCO improved on the KC with the entry into force of the Revised Kyoto Convention (RKC) in 2006.

1.2 Kyoto Convention (“KC”)

The early efforts of the CCC for simplifying and harmonizing customs procedures culminated in the International Convention on the Simplification and Harmonization of Customs Procedures, otherwise known as the Kyoto Convention (“KC”) or hereinafter referred to also as the “Convention”. The KC was adopted by the Council in 1973 and enforced in 1974.

1.3 Rationale for Revising the KC

Globalization, rapid transformation of international trade patterns, and advances in information technology since then compelled the WCO and its members to review and update the KC.

1.4 Revised Kyoto Convention (RKC)?

The review and update of the KC resulted in the revision of the convention to reflect economic and technological changes that have occurred and incorporate best practices of the member customs administrations of the WCO. The resultant revision is known as the Revised Kyoto Convention (“RKC”). RKC was adopted by 114 customs administrations attending the WCO's 94th Session in June 1999. It came into force on February 3, 2006, three months after India became the 40th signatory to the Protocol of Amendment.

The RKC contains necessary tools for facilitating trade that will ensure economic growth and improve the security of the international trading system. It seeks to answer the global call for professionalism and integrity in all customs administration. The RKC serves as the blueprint for modern and efficient customs procedures in the 21st century. The RKC is a key to anti-corruption initiative — by promoting the integrity and professionalism of customs administrations worldwide and reducing the susceptibility of businesses and citizens to corrupt customs practices.

1.5 Philippines vis-à-vis the KC

The Philippines was not a contracting party to the KC. However, in the various reforms and modernization programs undertaken by the Philippine Bureau of Customs, particularly during the 1992-98 Customs Reform and Modernization Program, several national legislation were issued and systems and procedures developed that made many of its Customs operations compliant with the major provisions not just of the KC but also with the RKC, which was then being deliberated about.

1.6 Consequences of Philippine Non-accession of the KC.

Although many of its Customs operations under the 1992-1998 Customs Reforms and Modernization Program were compliant with the major provisions of the KC and also of the RKC, it was a purely administrative initiative. This administrative initiative was subsequently changed or ignored by succeeding Customs management. Reforms were not sustained, and worst in some fronts, there were even reversals. This could have been minimized if not all together prevented, if the Philippines were a contracting party to the KC or has acceded to the KC.

1.7 Compliance vs. Accession: Differences

Being Kyoto Compliant means accepting the responsibility to construct regulatory policies and practices in a manner that is consistent with the principles laid down in the Convention, conforming to the standards set forth in the Convention. Being compliant is something that can be done at any time by any country, whether or not it accedes to the Convention. It does not create rights and responsibilities relative to contracting parties.

1.8 Accession

Accession is a step beyond being compliant. It is a legal act through which one recognizes that one is or intends to be compliant, that one accepts the obligations of the Convention as being legally binding. It creates rights and responsibilities relative to other contracting parties.

Accession would send a clear message that the public and private sector truly can work together to facilitate trade and that trade and security are not mutually exclusive. Accession presents a significant step forward in the promotion of economic growth, national security, and customs integrity at both the national and international level.

Accession sends a clear message to both the international trade community and governments around the world that the Philippines stands firmly behind customs procedures that facilitate the secure movement of legitimate trade across national borders.

Accession will bring the following benefits:

- Protection against passage or issuance of National Legislation [revision of Customs Code, Issuance of Presidential Decrees (PDs) and Executive Order's (EO's) and Administrative Orders (AOs), Customs Administrative Orders (CAOs) and Customs Memorandum Orders (CMOs)] that are against the principles and provisions of the RKC. Moves to legislate measures that are anti trade facilitation can out rightly be rejected if we are a signatory to the RKC.
- Provide a solid foundation for reforming and strengthening our Legislative Base which is a very important first step in reforming Customs and related institutions. Eliminating the gaps between RKC and National Legislation can be the Action Program of a Joint Business-Congressional-DOF-BOC Reform Agenda.
- Provide benchmark for assessing the status of the Philippine's Trade Efficiency and Competitiveness.
- Provide a mechanism, the RKC Management Committee, to which foreign companies and countries can express their grievances against Customs administration which does not properly implement RKC.
- Provide the training ground and human resources, such as the Lead Shepherds and the members of the Team of Technical Experts involved in analyzing compliance of national legislation to the provisions of the RKC, who can drive the reform process.

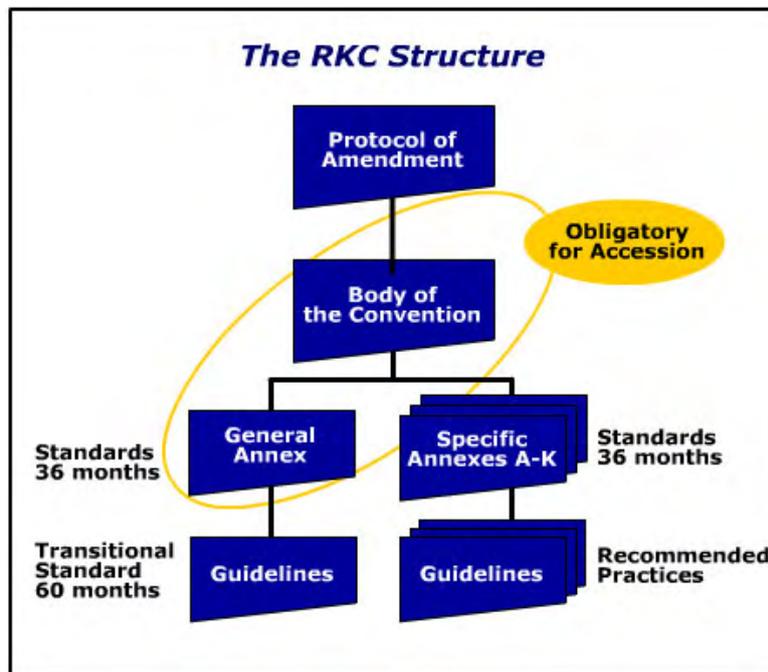
Fastest and Most Effective way of Announcing Globally that Trade and Investments are Facilitated in the Philippines and that the regulatory environment favorably compares with the best in the world.

1.9 Benefits Expected from Trading with Countries that are RKC Compliant

- Reduce cost of clearing customs in other countries;
- Minimize if not eliminate delays in getting the goods into the country;

- Individual companies do not have to learn 140 separate sets of customs procedures;
- Reduce if not eliminate inefficient customs procedures and policies that impede access to markets and unnecessarily increase costs;
- Facilitate product market introduction;
- More efficient customs procedures overall;
- Standardize customs implementation and administrative procedures worldwide - across participating countries;
- Reduce cycle time due to more predictability in the customs entry and release process, which will result in inventory savings (inventory costs can run as high as \$20 million per day);
- Promote greater understanding of compliance requirements resulting from increased transparency so that industry is better able to meet “time-to-market” objectives;
- Promote the implementation of special procedures for low-risk importers;
- Reduce opportunities for extortion of facilitation/grease, payments, thereby paving the smooth transition to increased transparency and automation.

1.10 RKC Structure



1.10.1 General Annex

Chapter	Title
1	General Principles (e.g., partnership with the trade)
2	Definitions
3	Clearance and other Customs Formalities (e.g., standardized and simplified documents, minimum requests, pre-arrival declaration)
4	Duties and Taxes (e.g. deferred payment)
5	Security
6	Customs Control (e.g. risk management, audit-based controls, specially simplified procedures for authorized traders, co-operation with OGAs)
7	Application of Information Technology
8	Relationship between the Customs and Third Parties
9	Information, Decisions and Rulings supplied by the

1.10.2 Specific Annexes and their Chapters

Specific Annex	Chapter	Title
A	<i>Arrival of Goods in a Customs Territory</i>	
	1	Formalities Prior to the Lodgement of the Goods Declaration
B	2	Temporary Storage of Goods
	<i>Importation</i>	
	1	Clearance for Home Use
C	2	Re-importation in the Same State
	3	Relief from Import Duties and Taxes
	<i>Exportation</i>	
D	1	Outright Exportation
	<i>Customs Warehouses and Free Zones</i>	
E	1	Customs Warehouses
	2	Free Zones
	<i>Transit</i>	
F	1	Customs Transit
	2	Transshipment
	3	Carriage of Goods Coastwise
	<i>Processing</i>	
G	1	Inward Processing
	2	Outward Processing
	3	Drawback
	4	Processing of Goods for Home Use
H	<i>Temporary Admission</i>	
	1	Temporary Admission
J	<i>Offences</i>	
	1	Customs Offences
	<i>Special Procedures</i>	
	1	Travellers
	2	Postal Traffic
K	3	Means of Transport for Commercial use
	4	Stores
	5	Relief Consignments
K	<i>Origin</i>	
	1	Rules of Origin
	2	Documentary Evidence of Origin
	3	Control of Documentary Evidence of Origin

1.11 RKC Management Committee

The RKC provides for the creation of a RKC Management Committee composed of the Contracting Parties as members. The functions of the RKC Management Committee are to administer the RKC, to recommend amendments to the RKC, to make decision on amendments to Recommended Practices, to make decisions with respect to a request of extension of the implementation period, and to review and update the Guidelines. The first meeting of the RKC Management Committee was held on 6-7 March 2006.

2.0 APEC Recommended Pathway to Accession

When a new Contracting Party accedes to the RKC, it must signify that it is accepting the Body of the convention and the General Annex. It need not accept any of the Specific Annexes. However, it may do so in whole or in part. A country did not feel compelled to be compliant with the Specific Annex at the outset. For as long as it is compliant with the Body of the Convention and the General Annex, a country can begin to consider accession to the RKC. When a country accepts a

chapter of a Specific Annex, or a Specific Annex, it is deemed to have accepted all the Standards contained therein. It may only make reservations to the Recommended Practice contained in a chapter or Specific Annex accepted. However, any reservation to any Recommended Practices must be expressly made by the country in their Instrument of Accession.

The guideline issued by APEC entitled The Revised Kyoto Convention: A Pathway to Accession and Implementation recommends, as a first step to become RKC compliant, undertaking a comparison of the provisions of the General Annex, and subsequently of the provisions of the Specific Annexes with a country's existing national legislation (whether administered by Customs or by any other government agency which has an official regulatory responsibility relating to international trade in goods and the collection of duties and taxes.) This will identify the provisions of the General Annex and the Specific Annexes with which a country is already in compliance with, and those with which it will need to become compliant. This process is referred to as a situational analysis.

The next step is to undertake a gap analysis. This analysis identifies the "gaps" in national legislation that need to be filled to enable accession to proceed and to ensure full compliance with the RKC. It involves a close examination of each provision of the RKC with the objective of determining whether national legislation is already compliant. If it is not compliant, where is it inconsistent? And finally, what needs to be done in order to become compliant?

3.0 Tabular Summary of Applicability and Gap Analysis:

	Not Applicable Provisions	Compliant Provisions	Non- Compliant/ Silent Provision	Total Number of Provisions
General Annex:				
• Chapter 3	3	28	14	45
• Chapter 4	4	15	5	24
• Chapter 5	-	5	2	7
• Chapter 6	-	6	4	10
• Chapter 7	-	-	4	4
• Chapter 8	-	3	4	7
• Chapter 9	-	-	9	9
• Chapter 10	-	12	-	12
Specific Annex A				
• Chapter 1	1	14	4	19
• Chapter 2	-	9	4	13
Specific Annex B				
• Chapter 1	-	1	1	2
• Chapter 2	-	-	15	15
• Chapter 3	-	5	2	7
Specific Annex C				
• Chapter 1	-	2	1	3
Specific Annex D				
• Chapter 1	-	8	8	16
• Chapter 2	-	16	5	21
Specific Annex E				
• Chapter 1	-	17	9	26
• Chapter 2	-	1	10	11
• Chapter 3	1	2	14	17
Specific Annex F				
• Chapter 1	-	14	12	26
• Chapter 2	-	-	18	18
• Chapter 3	-	3	7	10
• Chapter 4	-	-	9	9
Specific Annex G				

• Chapter 1	-	9	14	23
Specific Annex H				
• Chapter 1	-	21	6	27
Specific Annex J				
• Chapter 1	2	26	11	39
• Chapter 2	-	7	4	11
• Chapter 3	-	11	4	15
• Chapter 4	1	11	8	20
• Chapter 5	-	3	3	6
Specific Annex K				
• Chapter 1	-	13	-	13
• Chapter 2	-	9	4	13
• Chapter 3	-	12	1	13

3.1 Applicability Analysis

3.1.1 Applicability Defined

A Standard or a Recommended Practice is "Applicable" for purposes of the study when the subject matter covered is a principle, a formality, a control procedure or any other area of Customs operation which is either already covered by national legislation or must be covered by national legislation to better facilitate trade and improve customs compliance in the country. It is "Not Applicable" when its non-coverage in the national legislation will not prejudice trade facilitation and Customs control nor contravene the principles and objectives of the RKC in the country.

Non-applicable standards and recommended practices will also not be covered in the National Strategy for Compliance to be developed in this Study. Not being applicable, these should pose no problem in the acceptance of the whole General Annex nor would it be relevant to accept the Specific Annex or the Chapters containing these.

3.1.2 Non-Applicable Provisions of the General Annex

While the General Annex deals with the core principles for all Customs procedures and practices to ensure that these are uniformly applied by Customs administrations, the customs procedures specifically dealing on land border situations are not relevant to an archipelagic country such as the Philippines. Thus the following standards of the General Annex are not applicable to the Philippine situation:

3.1.2.1 Chapter 3: Clearance and Other Customs Formalities — Competent Customs offices:

- Standard 3.3 *Juxtaposed Customs offices*. Where Customs offices are located at a common border crossing, the Customs administrations concerned shall correlate the business hours and the competence of those offices.
- Transitional Standard 3.4. *Cooperation at juxtaposed Customs offices*. At common border crossings, the Customs administrations concerned shall, whenever possible, operate joint controls.
- Transitional Standard 3.5. *New Customs offices at common borders*. Where the Customs intend to establish a new Customs office or to convert an existing one at a common border crossing, they shall, wherever possible, co-operate with the neighboring Customs to establish a juxtaposed Customs office to facilitate joint controls.

There are no expressed provisions in the Customs Code on payment due date. However, It may be inferred from the provisions on Abandonment as well as on the period of storage in and illegal withdrawals from customs warehouses that payment due dates are prior to Customs release. Thus Standard 4.9 is not applicable as well.

- Chapter 4: *Duties and Taxes, A. Assessment, Collection and Payment of Duties and Taxes*, Standard 4.9. When national legislation specifies that the due date may be after the release of the goods, the date shall be at least ten days after the release. No interest shall be charged for the period between the date of release and the due date.

A form of deferred payment available to government imports is the Special Allotment Release Order or SARO but even this facility is strictly release upon posting of a guarantee by the government office concerned that they commit to work out with the Department of Budget and Management to obtain the SARO that would credit the collection of Customs. For the importations of the private sector, there is no release on deferred payment facility nor would it be conceivable for government to legislate such. The following General Annex Standards on deferred payment of duties and taxes are not applicable:

3.1.2.2 Chapter 4: Duties and Taxes, B, Deferred Payment of Duties and Taxes

- Standard 4.15. Where national legislation provides for the deferred payment of duties and taxes, it shall specify the conditions under which such facility is allowed.
- Standard 4.16. Deferred payment shall be allowed without interest charges to the extent possible.
- Standard 4.17. The period for deferred payment of duties and taxes shall be at least fourteen days.

3.1.3 Non-Applicable Provisions of the Specific Annexes

3.1.3.1 Specific Annex E: Transit, Chapter 3: Carriage of Goods Coastwise — Security.

- Standard 17

P	Only when the Customs consider it indispensable shall security be required in respect of goods in free circulation being transported under the carriage of goods coastwise procedure which would be liable to export duties and taxes if exported or which are subject to export prohibitions or restrictions.
N	Customs has no jurisdiction over goods in free circulation. It must first assume jurisdiction as in seizing it or holding it for some violation before it can require security.

3.1.3.2 Specific Annex J: *Special Procedures — Field of Application*

The standard and recommended practice below of Annex J Chapter 1 on Travellers refers to departure and arrival at a land border and therefore not applicable to Philippine Customs.

- *Standard 4.* Subject to compliance with the appropriate Customs controls, travelers entering or leaving the country by their means of transport for private use shall be permitted to accomplish all necessary Customs formalities without, as a matter of course, having to leave the means of transport in which they are traveling.
- *Recommended Practice 5.* Travelers entering or leaving the country by road vehicle for commercial use or train should be permitted to accomplish all necessary Customs formalities without, as a matter of course, having to leave the means of transport in which they are traveling.

Likewise, the below recommended practice on the treatment of stores for consumption on international express trains of Annex J Chapter 4 is not applicable:

3.1.3.3 Chapter 4: Stores: Stores on board arriving vessels, aircraft or trains — a. Exemption from import duties and taxes

- *Recommended Practice 4.* Stores for consumption by the passengers and the crew imported as provisions on international express trains should be exempted from import duties and taxes provided that:
 1. Such goods are purchased only in the countries crossed by the international train in question; and
 2. Any duties and taxes chargeable on such goods in the country where they were purchased are paid.

3.2 Gap Analysis

3.2.1 Components of Gap Analysis

The Gap Analysis identified the following:

- a. Standards, Transitory Standards and Recommended Practices that are compliant with National Legislation,
- b. Provisions or specific National Legislation that support the Standards, Transitory Standards and Recommended Practices we are compliant with,
- c. Standards, Transitory Standards and Recommended Practices that are not compliant with National Legislation, for the following reasons:
 1. It is not allowed under our current legislation,
 2. Our Code, laws, administrative orders and/or circulars are inconsistent with the standards, transitory standards and recommended practices,
 3. It is allowed under certain conditions which are not those contemplated by the RKC,
 4. Our Code, laws, administrative orders and/or circulars are silent with regard to the said standards, transitory standards, and/or recommended practice,
 5. Contrary to the present rules or procedure as designed under the Asycuda or TWM.

Aside from identifying Standards, Transitory Standards and Recommended Practices for which National Legislation is non-compliant, part of the analysis was to identify the reason for the gap and to recommend measures needed to remove the gap.

The result of the gap analysis and a discussion thereof are contained in the following annexes attached hereto:

- Annex A – Standards and Transitory Standards of the General Annex that Philippine National Legislations are compliant with.
- Annex B – Standards and Transitory Standards of the General Annex that Philippine National Legislations are not compliant with.
- Annex C – Standards and Recommended Practices of the Specific Annexes that Philippine National Legislations are compliant with.
- Annex D – Standards and Recommended Practices of the Specific Annexes that Philippine National Legislations are not compliant with.

3.3 Summary of Applicability and Gap Analysis — Including Recommendation on Accession Thereto.

3.3.1 General Annex

3.3.1.1 Chapter 3 : Clearance and Other Customs Formalities

Out of forty five (45) standards and transitional standards contained in this chapter of the General Annex, the following three (3) standards are not applicable to the Philippines:

3.3	Where Customs offices are located at a common border crossing, the Customs administrations concerned shall correlate the business hours and the competence of those offices.	Standard
3.4	At common border crossing, the Customs administrations shall, whenever possible, operate joint controls.	Standard
3.5	Where the Customs intend to establish a new Customs office or to convert an existing one at a common border crossing, they shall, wherever possible, co-operate with the neighbouring Customs to establish a juxtaposed Customs office to facilitate joint controls.	Standard

Philippine national legislation is silent as to the following eight (8) standards and transitional standards, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including these standards and transitional standards for us to be compliant:

3.9	Before lodging the Goods declaration the declarants shall be allowed, under such conditions as may be laid down by the Customs: (a) to inspect the goods; and (b) to draw samples.	Standard
3.20	The Customs shall permit the lodging of the Goods declaration at any designated Customs office.	Standard
3.25	National legislation shall make provision for the lodging and registering or checking of the Goods declaration and supporting documents prior to the arrival of the goods.	Standard
3.28	The Customs shall permit the declarant to amend the Goods declaration if a request is received after the checking the Goods declaration has commenced, if the reasons given by the declarant are deemed valid by the Customs.	Transitional
3.31	For the purpose of checking the Goods declaration, the Customs shall take only such action as they deem essential to ensure compliance with Customs law.	Standard
3.35	If the goods must be inspected by other competent authorities and the Customs also schedules an examination, the Customs shall ensure that the inspections are co-ordinated and, if possible, carried out at the same time.	Standard
3.36	The Customs shall consider requests by the declarant to be present or to be represented at the examination of the goods. Such request shall be granted unless exceptional circumstances exist.	Standard
3.37	If the Customs deem it useful, they shall require the declarant to be present or to be represented at the examination of the goods to give them any assistance necessary to facilitate the	Standard

	examination.	
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Our national legislation is not compliant with the following six (6) standards and transitional standards of Chapter 3, i.e., these standards and transitional standards are not allowed under existing laws and/or regulations:

3.7	Any person having the right to dispose of the goods shall be entitled to act as declarant.	Standard
3.19	The Customs shall not require a translation of the particulars of supporting documents except when necessary to permit the processing of the Goods declaration.	Standard
3.24	At the request of the declarant and for reasons deemed valid by the Customs, the latter shall extend the time limit prescribed for lodging the Goods declaration.	Standard
3.29	The declarant shall be allowed to withdraw the Goods declaration and apply for another Customs procedure, provided that the request to do so is made to the Customs before the goods have been released and that the reasons are deemed valid by the Customs.	Transitional
3.32	<p>For authorized persons who meet criteria specified by the Customs, including having an appropriate record of compliance with Customs requirements and a satisfactory system for managing their commercial records, the Customs shall provide for:</p> <ul style="list-style-type: none"> • release of the goods on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final Goods declaration. • Clearance of the goods at the declarant's premises or another place authorized by the Customs; <p>And, in addition, to the extent possible, other special procedures such as:</p> <ul style="list-style-type: none"> • Allowing a single Goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person; • Use of the authorized persons' commercial records to self-assess their duty and tax liability and, where appropriate, to ensure compliance with other Customs requirements; • Allowing the lodgment of the Goods declaration by means of an entry in the records of the authorized person to be supported subsequently by a supplementary Goods declaration. 	Transitional
3.41	If the Customs are satisfied that the declarant will subsequently accomplish all the formalities in respect of clearance they shall release the goods, provided that the declarant produces a commercial or official document giving the main particulars of the consignment concerned and acceptable to the Customs, and that security, where required, has been furnished to ensure collection of any applicable duties and taxes.	Standard

3.3.1.2 Chapter 4 : Duties and Taxes

Out of twenty four (24) standards and transitional standards contained in this chapter of the General Annex, the following four (4) standards are not applicable to the Philippines:

4.9	When national legislation specifies that the due date may be after the release of the goods, the date shall be at least ten days after the release. No interest shall be charged for the period between the date of release and the due date.	Standard
4.15	Where national legislation provides for the deferred payment of duties and taxes, it shall specify the conditions under which such facility is allowed.	Standard
4.16	Deferred payment shall be allowed without interest charges to the extent possible.	Standard
4.17	The period for deferred payment of duties and taxes shall be at least 14 days.	Standard

Philippine national legislation is silent as to the following three (3) standards and transitional standards, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including these standards and transitional standards for us to be compliant:

4.20	Where permission is given by the Customs for goods originally declared for a Customs procedure with payment of the duties and taxes to be placed under another Customs procedure, repayment shall be made of any duties and taxes charged in excess of the amount due under the new procedures.	Transitional
4.21	Decisions on claims for repayment shall be reached, and notified in writing to the persons concerned, without under delay, and repayment of the amounts overcharged shall be made as soon as possible after the verification of claims.	Standard
4.22	Where it is established by the Customs that the overcharge is a result of an error on the part of the Customs in assessing the duties and taxes, repayment shall be made as a matter of priority.	Standard

Our national legislation is not compliant with the following two (2) standards and transitional standards of Chapter 4, i.e., these standards and transitional standards are not allowed under existing laws and/or regulations:

4.10	National legislation shall specify the period within which the Customs may take legal action to collect duties and taxes not paid by the due date.	Standard
4.19	Repayment shall be granted in respect of imported or exported goods which are found to have been defective or otherwise not in accordance with the agreed specifications at the time of importation or exportation and are returned either to the supplier or to another person designated by the supplier, subject to the following conditions: <ul style="list-style-type: none"> • The goods have not been worked, repaired or used in the country of importation, and are re-exported within a reasonable time; • The goods have not been worked, repaired, or used in the country to which they were exported, and are re-imported within a reasonable time. 	Standard

	<p>Use of the goods shall, however, not hinder the repayment if such use was indispensable to discover the defects or other circumstances which caused the re-exportation or re-importation of the goods.</p> <p>As an alternative to re-exportation or re-importation, the goods may be abandoned to the Revenue or destroyed or rendered commercially valueless under Customs control, as the Customs may decide. Such abandonment or destruction shall not entail any cost to the Revenue.</p>	
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3.3.1.3 Chapter 5 : Securities

Philippine national legislation is silent as to the following standard, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including these standards and transitional standards for us to be compliant:

5.6	Where security is required, the amount of security to be provided shall be as low as possible and, in respect of the payment of duties and taxes, shall not exceed the amount potentially chargeable.	Standard
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Our national legislation is not compliant with the following standard, i.e., this standard is not allowed under existing laws and/or regulations:

5.7	Where security has been furnished, it shall be discharged as soon as possible after the Customs are satisfied that the obligations under which the security was required have been duly fulfilled.	Standard
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3.3.1.4 Chapter 6 : Customs Control

Out of ten (10) standards and transitional standards contained in this chapter of the General Annex, Philippine national legislation is silent as to the following standards, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including these standards and transitional standards for us to be compliant:

6.5	The Customs shall adopt a compliance measurement strategy to support risk management.	Standard
6.7	The Customs shall seek to co-operate with other Customs administrations and seek to conclude mutual administrative assistance agreements to enhance Customs control.	Standard
6.8	The Customs shall seek to co-operate with the trade and seek to conclude Memorandum of Understanding to enhance Customs control.	Standard
6.10	The Customs shall evaluate traders' commercial systems where those systems have an impact on Customs operations to ensure compliance with Customs requirements.	Standard

3.3.1.5 Chapter 7 : Application of Information Technology

Philippine national legislation is silent on all the following four (4) standards contained in this Chapter, and to become compliant to the said standards and transitional standards of this Chapter of the General Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly adopting the said standards:

7.1	The Customs shall apply information technology to support Customs operations, where it is cost-effective and efficient for the Customs and for the trade. The Customs shall specify the conditions for its application.	Standard
7.2	When introducing computer applications, the Customs shall use relevant internationally accepted standards.	Standard
7.3	The introduction of information technology shall be carried out in consultation with all relevant parties directly affected, to the greatest extent possible.	Standard
7.4	New or revised national legislation shall provide for: <ul style="list-style-type: none"> • Electronic commerce methods as an alternative to paper-based documentary requirements; • Electronic as well as paper-based authentication methods; • The right of the Customs to retain information for their own use and, as appropriate, to exchange such information with other Customs administrations and all other legally approved parties by means of electronic commerce techniques. 	Standard

3.3.1.6 Chapter 8 : Relationship between the Customs and Third Parties

Philippine national legislation is silent on the following three (3) standards contained in this Chapter, and to become compliant to the said standards of this Chapter of the General Annex there is a need to issue guidelines in a Manual of Customs Operations (to be issued as a regulation) which should expressly adopt the said standards:

8.3	The Customs transactions where the person concerned elects to do business on his own account shall not be treated less favourably or be subject to more stringent requirements than those Customs transactions which are handled for the person concerned by a third party.	Standard
8.4	A person designated as third party shall have the same rights as the person who designated him in those matters related to transacting business with the Customs.	Standard
8.5	The Customs shall provide for third parties to participate in their formal consultations with the trade.	Standard

3.3.1.7 Chapter 9 : Information, Decisions and Ruling Supplied by the Customs

Philippine national legislation is silent on all the following nine (9) standards contained in this Chapter, and to become compliant to the said standards and transitional standards of this Chapter of the General Annex there is a need to pass a law or issue regulations which should expressly adopt the said standards and/or transitional standards:

9.1	The Customs shall ensure that all relevant information of general application pertaining to Customs law is readily available to any interested person.	Standard
9.2	When information that has been made available must be amended due to changes in Customs law, administrative arrangements or requirements, the Customs shall make the revised information readily available sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless advance notice is	Standard

	precluded.	
9.3	The Customs shall use information technology to enhance the provisions of information.	Standard
9.4	At the request of the interested person, the Customs shall provide, as quickly and as accurately as possible, information relating to the specific matters raised by the interested person and pertaining to Customs law.	Standard
9.5	The Customs shall supply not only information specifically requested but also any other pertinent information which they consider the interested person should be made aware.	Standard
9.6	When the Customs supply information, they shall ensure that they do not divulge details of a private or confidential nature affecting the Customs or third parties unless such disclosure is required or authorized by national legislation.	Standard
9.7	When the Customs cannot supply information free of charge, any charge shall be limited to the approximate cost of the services rendered.	Standard
9.8	At the written request of the person concerned, the Customs shall notify their decision in writing within a period specified in national legislation. Where the decision is adverse to the person concerned, the reasons shall be given and the right of appeal advised.	Standard
9.9	The Customs shall issue binding rulings at the request of the interested person, provided that the Customs have all the information they deem necessary.	Standard

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Aside from the standards and transitional standards mentioned above, Philippine national legislation is compliant with the other standards and transitional standards contained in the General Annex of the Revised Kyoto Convention. However, despite said compliance, there is a need to compile the same together with regulations to be issued to be compliant with the above mentioned standards and/or transitional standards in a coherent manner, i.e., through a single Manual of Customs Procedures and Operations, to enhance compliance by properly informing and educating the stakeholders and the officers and members of the Customs on the proper treatment of various customs procedures and to ensure the uniform enforcement thereof.

3.3.2 Specific Annexes

3.3.2.1 Specific Annex A : Arrival Of Goods In A Customs Territory

a. Chapter 1 : Formalities Prior to the Lodgement of the Goods Declaration

The following Recommended Practice contained in this chapter of Specific Annex A is not applicable to the Philippines:

7	Where the Customs office at which the goods are to be produced is not located at the place where the goods are introduced into the Customs territory, a document should be required to be lodged with the Customs at that place only where the Customs consider it necessary for control purposes.	Recommended Practice
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Philippine national legislation is silent as to the following Recommended Practice of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations

need to be issued as a regulation expressly including this Recommended Practice for us to be compliant:

2	Customs formalities prior to the lodgement of the Goods declaration shall apply equally, without regard to the country of origin of the goods or the country from which they arrived.	Recommended Practice
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There are existing laws in the Philippines which run counter to the following Recommended Practices of this Chapter, which will require an amendment of our laws.

9	The Customs should limit their information requirements to that available in carriers' normal documentation and should base their requirements on those set out in the relevant international transport agreements.	Recommended Practice
10	The Customs should normally accept the cargo declaration as the only required documentation for the production of the goods.	Recommended Practice
12	Where the documents produced to the Customs are made out in a language which is not specified for this purpose or in a language which is not a language of the country into which the goods are introduced, a translation of the particulars given in those documents should not be required as a matter of course.	Recommended Practice

In view of the need to pass legislation to amend existing law in order for us to be compliant with these Recommended Practices, we recommend acceptance of this Chapter but make an express reservation on the above enumerated Recommended Practices.

b. Chapter 2 : Temporary Storage of Goods

Philippine national legislation is silent as to the following Standards and Recommended Practice of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including this Recommended Practice for us to be compliant:

5	The Customs should accept the cargo declaration or another commercial document as the only document to be required to place the goods under temporary storage, provided that all the goods mentioned in that cargo declaration or that other commercial document are placed in temporary store.	Recommended Practice
7	Goods under temporary storage shall be allowed, for reasons deemed valid by the Customs, to undergo normal operations necessary for their preservation in their unaltered state.	Standard
8	Goods under temporary storage should be allowed, for reasons deemed valid by Customs, to undergo normal operations necessary to facilitate their removal from the temporary store and their further transport.	Recommended Practice

There are existing laws in the Philippines which run counter to the following Recommended Practice of this Chapter, which will require an amendment of our laws.

10	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend the period initially fixed.	Recommended Practice
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In view of our non-compliance with the above Recommended Practice, which will require an amendment of our law, we recommend that we accept this Chapter of Specific Annex A, but express our reservation to this specific Recommended Practice.

3.3.2.2 Specific Annex B : Importation

a. Chapter 1 : Clearance for Home Use

There are existing laws in the Philippines which run counter to the following Recommended Practice of this Chapter, which will require an amendment of our laws.

2	National legislation should provide that goods may be declared in an alternative manner to the standard Goods declaration on the condition that it provides the necessary particulars relating to the goods to be cleared for home use.	Recommended Practice
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In view of our non-compliance with the above Recommended Practice, which will require an amendment of our law, we recommend that we accept this Chapter of Specific Annex B, but express our reservation to this specific Recommended Practice.

b. Chapter 2 : Re-Importation in the Same State

Philippine national legislation is silent as to all of the Standards and Recommended Practice of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including these Standards and Recommended Practices for us to be compliant:

1	Re-importation in the same state shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex.	Standard
2	Re-importation in the same state shall be allowed even if only a part of the exported goods is re-imported.	Standard
3	When circumstances so justify, re-importation in the same state shall be allowed even if the goods are re-imported by a person other than the person who exported them.	Standard
4	Re-importation in the same state shall not be refused on the grounds that the goods have been used or damaged or have deteriorated during their stay abroad.	Standard
5	Re-importation in the same state shall not be refused on the grounds that, during their stay abroad, the goods have undergone operations necessary for their preservation or maintenance provided, however, that their value at the time of exportation has not been enhanced by such operations.	Standard
6	Re-importation in the same state shall not be limited to goods imported directly from abroad but shall also be granted for goods already placed under another Customs procedure.	Standard
7	Re-importation in the same state shall not be refused on the grounds that the goods were exported without notification of intended return.	Standard
8	Where time limits are fixed beyond which re-importation in the same state will not be granted, such limits shall be of sufficient duration to take account of the differing circumstances pertaining to each type of case.	Standard
9	The Customs shall only require that goods re-imported in the same state be declared at the Customs office through	Standard

	which they were exported where this will facilitate the re-importation procedure.	
10	No written Goods declaration shall be required for the re-importation in the same state of packings, containers, pallets and means of transport for commercial use which are in use for the international transport of goods, subject to the satisfaction of the Customs that the packings, containers, pallets and means of transport for commercial use were in free circulation at the time of exportation.	Standard
11	The Customs shall, at the request of the declarant, allow goods to be exported with notification of intended return, and shall take any necessary steps to facilitate re-importation in the same state.	Standard
12	The Customs shall specify the requirements relating to the identification of goods exported with notification of intended return. In carrying this out, due account shall be taken of the nature of the goods and the importance of the interests involved.	Standard
13	Goods exported with notification of intended return should be granted conditional relief from any export duties and taxes applicable.	Recommended Practice
14	At the request of the person concerned, the Customs shall allow exportation with notification of intended return to be converted to outright exportation, subject to compliance with the relevant conditions and formalities.	Standard
15	Where the same goods are to be exported with notification of intended return and re-imported in the same state several times, the Customs should, at the request of the declarant, allow the declaration for exportation with notification of intended return that is lodged on the first exportation to cover the subsequent re-importations and exportation to cover the subsequent re-importations and exportations of the goods during a specified period.	Recommended Practice

c. Chapter 3: Relief from Import Duties and Taxes

There are existing laws in the Philippines which run counter to the following Recommended Practices of this Chapter, which will require an amendment of our laws.

6	Contracting Parties should consider granting relief from import duties and taxes for goods specified in international instruments under the conditions laid down therein, and also give careful consideration to the possibility of acceding to those international instruments.	Recommended practice
7	Relief from import duties and taxes and from economic prohibitions and restrictions should be granted in respect of the following goods under the conditions specified, and provided that any other requirements set out in the national legislation for such relief are complied with: <ul style="list-style-type: none"> (a) Therapeutic substances of human origin, blood grouping and tissue typing reagents, where they are consigned to institutions or laboratories approved by the competent authorities; (b) Samples of no commercial value which are regarded by the Customs to be of negligible value and which are to be used only soliciting orders for goods of the 	Recommended Practice

	<p>kind they represent;</p> <ul style="list-style-type: none"> (c) Removable articles other than industrial, commercial or agricultural plant or equipment, intended for the person and professional use of a person or members of his family which are brought into the country with that person or separately for the purpose of removal of his residence to the country; (d) Effects inherited by a person who, at the time of the death of the deceased, has his principal residence in the country of importation and provided that such personal effects were for personal use of the deceased; (e) Personal gifts, excluding alcohol, alcoholic beverages and tobacco goods, not exceeding a total value to be specified in national legislation on the basis of retail value; (f) Goods such foodstuffs, medicaments, clothings and blankets sent as gifts to an approved charitable or philanthropic organization for distribution free of charge to needy persons by the organization or under its control; (g) Awards to persons resident in the country of importation subject to the production of any supporting documents required by the Customs; (h) Materials for the construction, upkeep or ornamentation of military cemeteries; coffins, funerary urns and ornamental funerary articles imported by organization approved by competent authorities; (i) Documents, forms, publications, reports and other articles of no commercial value specified in national legislation; (j) Religious objects used for worships; and (k) Products imported for testing, provided that the quantities imported do not exceed those strictly necessary for testing, and that the products are used up during testing or that remaining products are re-exported or rendered commercially valueless under Customs control. 	
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In view of our non-compliance with the above Recommended Practices, which will require an amendment of our law, we recommend that we accept this Chapter of Specific Annex B, but express our reservation to these specific Recommended Practices.

3.3.2.3 Specific Annex C : Exportation

a. Chapter 1 : Outright Exportation

There are existing regulations in the Philippines which run counter to the following Recommended Practice, which needs to be amended and can be amended without need for an amendment of an existing law. In view thereof, we can accept this Chapter without any reservation.

2	<p>National legislation should provide that goods may be declared in an alternative manner to the standard Goods declaration on the condition that it provides the necessary particulars relating to the goods to be cleared for outright exportation.</p>	<p>Recommended Practice</p>
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3.3.2.4 Specific Annex D : Customs Warehouses and Free Zones

a. Chapter 1 : Customs Warehouses

Philippine national legislation is silent as to the following Standard of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including this Recommended Practice for us to be compliant:

10	<p>Any person entitled to dispose of the warehoused goods shall be allowed, for reasons deemed valid by the Customs:</p> <ul style="list-style-type: none"> (a) to inspect them; (b) to take samples, against payment of import duties and taxes wherever applicable; (c) to carry out operations necessary for their preservation; (d) to carry out such other normal handling operations as are necessary to improve their packaging or marketable quality or to prepare them for shipment, such as breaking bulk, grouping of packages, sorting and grading, and repacking. 	Standard
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There are existing laws in the Philippines which run counter to the following Standards and Recommended Practices of this Chapter, which will require an amendment of our laws.

2	National legislation shall provide for Customs warehouses open to any person having the right to dispose of the goods (public Customs warehouses)	Standard
5	<p>Storage in public Customs warehouses should be allowed for all kinds of imported goods liable to import duties and taxes or to prohibitions or restrictions other than those imposed on grounds of:</p> <ul style="list-style-type: none"> • Public morality or order, public security, public hygiene or health, or for veterinary or phytosanitary considerations; or • The protection of patents, trade marks and copyrights; <p>Irrespective of quantity, country of origin from which arrived or country of destination.</p> <p>Goods which constitute a hazard, which are likely to affect other goods or which require special installations should be accepted only by Customs warehouses specially designed to receive them.</p>	Recommended practice
7	Admission to Customs warehouses shall be allowed for goods which are entitled to repayment of import duties and taxes when exported, so that they may qualify for such repayment immediately, on condition that they are to be subsequently exported.	Recommended Practice
8	Admission to Customs warehouses, with a view to subsequent exportation or other authorized disposal, should be allowed for goods under the temporary admission procedure, the obligations under that procedure thereby being suspended or discharged.	Recommended Practice
9	Admission to Customs warehouses should be allowed for goods intended for exportation that are liable to or have	Recommended Practice

	borne internal duties or taxes, in order that they may qualify for exemption from or repayment of such internal duties and taxes, on condition that they are to be subsequently exported.	
11	The Customs shall fix the authorized maximum duration of storage in a Customs warehouse with due regard to the needs of the trade, and in the case of non-perishable goods it shall not be less than one year.	Standard
12	The transfer of ownership of warehoused goods shall be allowed.	Standard

Section 1901 to 1908 of the TCCP provide the legal basis for the warehousing of imported goods to achieve the objectives of this Annex. However, the expanded use of the facility to goods of national origin as well as those dealt with under previous regimes are not supported by the provisions of the TCCP. In view of our non-compliance with Standard 2, 11, and 12, which will require an amendment of our law, we recommend that we not accept this Chapter of Specific Annex D.

b. Chapter 2 : Free Zones

Philippine national legislation is silent as to the following Recommended Practice of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including this Recommended Practice for us to be compliant:

15	The transfer of ownership of goods admitted to a free zone shall be allowed.	Standard
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There are existing regulations in the Philippines which run counter to the following Recommended Practices of this Chapter, which needs to be amended and can be amended without need for an amendment of an existing law.

18	Where a document must be produced to the Customs in respect of goods which on removal from a free zone are sent directly abroad, the Customs should not require more information than already available on the documents accompanying the goods.	Recommended Practice
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There are existing laws in the Philippines which runs counter to the following Standards and Recommended Practice of this Chapter, which will require an amendment of our laws.

3	The Customs shall lay down the arrangements for Customs control including appropriate requirements as regards the suitability, construction and layout of free zones.	Standard
4	The Customs shall have the right to carry out checks at any time of the goods stored in a free zone.	Standard
9	No goods declaration should be required by the Customs in respect of goods introduced into a free zone directly from abroad if the information is already available on the documents accompanying the goods.	Recommended Practice

Standards 3 and 4 run counter to the provisions of Republic Act No. 7916 which expressly provides that these facilities are outside customs control and jurisdiction are vested with the Philippine Export Processing Zone Authority. In view of our non-compliance with Standard 3 and 4, which will require an amendment of our law, we recommend that we not accept this Chapter of Specific Annex D.

3.3.2.5 Specific Annex E : Transit

a. Chapter 1 : Customs Transit

There is no Philippine national legislation which would make us compliant with the Standards and Recommended Practices contained in this Chapter of Specific Annex E. Therefore, guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including this Recommended Practice for us to be compliant:

1	Customs transit shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex.	Standard
2	The Customs shall allow goods to be transported under Customs transit in their territory: (a) from an office of entry to an office of exit; (b) from an office of entry to an inland Customs office; (c) from an inland Customs office to an office of exit; and (d) from one inland Customs office to another inland Customs office.	Standard
3	Goods being carried under Customs transit shall not be subject to the payment of duties and taxes, provided the conditions laid down by the Customs are complied with and that any security required has been furnished.	Standard
4	National legislation shall specify the persons who shall be responsible to the Customs for compliance with the obligations incurred under Customs transit, in particular for ensuring that the goods are produced intact at the office of destination in accordance with the conditions imposed by the Customs.	Standard
5	The Customs should approve persons as authorized consignors and authorized consignees when they are satisfied that the prescribed conditions laid down by the Customs are met.	Recommended Practice
6	Any commercial or transport document setting out clearly the necessary particulars shall be accepted as the descriptive part of the Goods declaration for Customs transit and this acceptance shall be noted on the document.	Standard
7	The Customs should accept as the Goods declaration for Customs transit any commercial or transport document for the consignment concerned which meets all the Customs requirements. This acceptance should be noted on the document.	Recommended Practice
8	The Customs at the office of departure shall take all necessary action to enable the office of destination to identify the consignment and to detect any unauthorized interference.	Standard
9	Subject to the provisions of other international conventions, the Customs should not generally require that transport-units be approved in advance for the transport of goods under Customs seal.	Recommended Practice
10	When a consignment is conveyed in a transport-unit and Customs sealing is required, the Customs seal shall be affixed to the transport-unit itself provided that the transport-unit is so constructed and equipped that: (a) Customs seals can be simply and effectively affixed to	Standard

	<p>it;</p> <p>(b) No goods can be removed from or introduced into the sealed part of the transport-unit without leaving visible traces of tampering or without breaking the Customs seal;</p> <p>(c) It contains no concealed spaces where goods may be hidden; and</p> <p>(d) All spaces capable of holding goods are readily accessible for Customs inspection.</p> <p>The Customs shall decide whether transport-units are secure for the purposes of Customs transit.</p>	
11	<p>Where the accompanying documents make it possible unequivocally to identify the goods, the latter should generally be transported without a Customs seal or fastening. However, a Customs seal or fastening may be required:</p> <ul style="list-style-type: none"> • Where the Customs office of departure considers it necessary in the light of risk management; • Where the Customs transit operation will be facilitated as a whole; or • Where an international agreement so provides. 	Recommended Practice
12	<p>If a consignment is, in principle, to be conveyed under Customs seal and the transport-unit cannot be effectively sealed, identification shall be assured and unauthorized interference rendered readily detectable by:</p> <ul style="list-style-type: none"> • Full examination of the goods and recording the results thereof on the transit document; • Affixing Customs seals or fastenings to individual packages; • a precise description of the goods by reference to samples, plans, sketches, photographs, or similar means, to be attached to the transit document; • stipulation of a strict routing and strict time limits; or • Customs escort. <p>The decision to waive sealing of the transport-unit shall, however, be the prerogative of the Customs alone.</p>	Standard
13	<p>When the Customs fix a time limit for Customs transit, it shall be sufficient for the purposes of the transit operations.</p>	Standard
14	<p>At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend any period initially fixed.</p>	Standard
15	<p>Only when they consider such a measure to be indispensable shall the Customs:</p> <p>(a) require goods to follow a prescribed itinerary; or</p> <p>(b) require goods to be transported under Customs escort.</p>	Standard
16	<p>Customs seals and fastenings used in the application of Customs transit shall fulfill the minimum requirements laid down in the Appendix to this Chapter.</p>	Standard
17	<p>Customs seals and identification marks affixed by foreign Customs should be accepted for the purposes of the Customs transit operation unless:</p>	Recommended Practice

	<ul style="list-style-type: none"> • they are considered not to be sufficient; • they are not secure; or • the Customs proceed to an examination of the goods. <p>When foreign Customs seals and fastenings have been accepted in a Customs territory, they should be afforded the same legal protection in that territory as national seals and fastenings.</p>	
18	Where the Customs offices concerned check the Customs seals and fastenings or examine the goods, they should record the results on the transit document.	Recommended Practice
19	A change in the office of destination shall be accepted without prior notification except where the Customs have specified that prior approval is necessary.	Standard
20	Transfer of the goods from one means of transport to another shall be allowed without Customs authorization, provided that any Customs seals or fastenings are not broken or interfered with.	Standard
21	The Customs should allow goods to be transported under Customs transit in a transport-unit carrying other goods at the same time, provided that they are satisfied that the goods under Customs transit can be identified and the other Customs requirements will be met.	Recommended Practice
22	The Customs should require the person concerned to report accidents or other unforeseen events directly affecting the Customs transit operation promptly to the nearest Customs office or other competent authorities.	Recommended Practice
23	National legislation shall not, in respect of the termination of a Customs transit operation, require more than that the goods and the relevant Goods declaration be presented at the office of destination within any time limit fixed, without the goods having undergone any change and without having been used, and with Customs seals, fastenings or identification marks intact.	Standard
24	As soon as the goods are under its control, the office of destination shall arrange without delay for the termination of the Customs transit operation after having satisfied itself that all conditions have been met.	Standard
25	Failure to follow a prescribed itinerary or to comply with a prescribed time limit should not entail the collection of any duties and taxes potentially chargeable, provided the Customs are satisfied that all other requirements have been met.	Recommended Practice
26	Contracting Parties should give careful consideration to the possibility of acceding to international instruments relating to Customs transit. When they are not in a position to accede to such international instruments they should, when drawing up bilateral or multilateral agreements with a view to setting up an international Customs transit procedure, take account therein of Standards and Recommended Practice in the present Chapter.	Recommended Practice

b. Chapter 2: Transshipment

Except for Recommended Practice 10, there is no Philippine national legislation which would make us compliant with the Standards and Recommended Practices contained in this Chapter of

Specific Annex E. Therefore, guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including these Standards and Recommended Practices for us to be compliant:

1	Transshipment shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex.	Standard
2	Goods admitted to transshipment shall not be subject to the payment of duties and taxes, provided the conditions laid down by the Customs are complied with.	Standard
3	Transshipment should not be refused solely on the grounds of the country of origin of the goods, the country from which they arrived or their country of destination.	Recommended Practice
4	Only one Goods declaration shall be required for the purposes of transshipment.	Standard
5	Any commercial or transport document setting out clearly the necessary particulars shall be accepted as the descriptive part of the Goods declaration from transshipment and this acceptance shall be noted on the document.	Standard
6	The Customs should accept as the Goods declaration for transshipment of any commercial or transport document for the consignment concerned which meets all the Customs requirements. This acceptance should be noted on the document.	Recommended practice
7	When the Customs consider it necessary, they shall take action at importation to ensure that the goods to be transhipped will be identifiable at exportation and that unauthorized interference will be readily detectable.	Standard
8	When the Customs fix a time limit for the exportation of goods declared for transshipment, it shall be sufficient for the purposes of transshipment.	Standard
9	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend any period initially fixed.	Recommended Practice
11	At the request of the person concerned, and subject to such conditions as the Customs may specify, the Customs should as far as possible allow goods in transshipment to undergo operations likely to facilitate their exportation.	Recommended Practice

c. Chapter 3: Drawback

The following Standard is not applicable to the Philippines:

17	Only when the Customs consider it indispensable shall security be required in respect of goods in free circulation being transported under the carriage of goods coastwise procedure which would be liable to export duties and taxes if exported or which are subject to export prohibitions or restrictions.	Standard
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Philippine national legislation is silent as to the following Standards and Recommended Practice of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including these Standards and Recommended Practices for us to be compliant:

2	The Customs shall allow goods to be transported under the carriage of goods coastwise procedure on board a vessel carrying other goods at the same time, provided that they are satisfied that the goods can be identified and other requirements will be met.	Standard
3	The Customs should require goods in free circulation being transported under the carriage of goods coastwise procedure to be segregated from other goods carried on board the vessel only when they consider it to be necessary for Customs control.	Recommended Practice
7	National legislation shall specify the places which are approved for the loading and unloading of goods under the carriage of goods coastwise procedure and the times during which loading and unloading may be carried out.	Standard
10	When a vessel transporting goods under the carriage of goods coastwise procedure is diverted during the voyage, the Customs should, at the request of the person concerned, allow such goods to be unloaded under the procedure at a place other than that originally intended. Any expenses chargeable shall be limited to the approximate cost of the services rendered.	Recommended Practice
11	When the transport of goods under the carriage of goods coastwise procedure is interrupted by accident or force majeure, the Customs shall require the master or other person concerned to take reasonable precautions to prevent the goods from entering into unauthorized circulation and to advise the Customs or other competent authorities of the nature of the accident or other circumstances which has interrupted the journey.	Standard
12	When a vessel transporting goods under the carriage of goods coastwise procedure is conveying imported goods that have not been declared or goods placed under any other Customs procedure, the Customs shall allow goods under the carriage of goods coastwise procedure to be loaded or unloaded as soon as possible after the arrival of the vessel at the place of loading or unloading.	Standard

There are existing regulations in the Philippines which run counter to the following Standard of this Chapter, which needs to be amended and can be amended without need for an amendment of an existing law.

13	The Customs shall require the master or other person concerned to present only a single document giving details of the vessel, listing the goods to be carried under the carriage of goods coastwise procedure and stating the port or ports in the Customs territory at which they are to be unloaded. This document, once endorsed by the Customs, shall constitute the authorization for the conveyance of the goods under the carriage of goods coastwise procedure.	Standard
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There are existing laws in the Philippines which run counter to the following Recommended Practice of this Chapter, which will require an amendment of our laws.

4	At the request of the person concerned, and subject to such conditions as the Customs deem necessary, the latter should allow goods to be transported under the carriage of goods coastwise procedure on board a vessel which is to	Recommended Practice
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	call at a foreign port during its voyage coastwise.	
5	When a vessel which is to call at a place or places outside the Customs territory has been authorized to convey goods under the carriage of goods coastwise procedure, those goods should be sealed only at the request of the person concerned or when the Customs consider sealing to be necessary to ensure that goods cannot be removed therefrom or other goods added thereto without this being readily apparent.	Recommended Practice
6	When a vessel transporting goods under the carriage of goods coastwise procedure is forced to deviate from its intended route and to call at a place outside the Customs territory, the Customs should regard those goods as remaining under the carriage of goods coastwise procedure provided they are satisfied that the goods are those which were originally placed under the procedure.	Recommended Practice
8	At the request of the person concerned, the Customs should, in the case of a vessel carrying only goods in free circulation under the carriage of goods coastwise procedure, allow such goods to be loaded or unloaded at any place and at any time.	Recommended practice
9	At the request of the person concerned, the Customs should allow goods under the carriage of goods coastwise procedure to be loaded or unloaded at a place other than that normally approved for that purpose even if the vessel is also carrying imported goods that have not been declared or goods placed under another Customs procedure. Any expenses chargeable shall be limited to the approximate cost of the services rendered.	Recommended practice
15	When a general authorization has been granted for a vessel, the Customs should require only a list of goods to be conveyed under the carriage of goods coastwise procedure before the goods are loaded.	Recommended Practice
16	In relation to goods unloaded from a vessel covered by a specific authorization, the Customs should require the master or other person concerned to present only a copy of the authorization listing the goods to be unloaded at the port. In the case of a vessel granted a general authorization, only a list of the goods to be unloaded should be required.	Recommended Practice

In view of the need to amend some of our existing laws in order for us to be compliant to the above Recommended Practices, we recommend that we express our reservation to the above.

3.3.2.6 Specific Annex F : Processing

a. Chapter 1 : Inward Processing

Philippine national legislation is silent as to the following Standards and Recommended Practices of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including these Standards and Recommended Practices for us to be compliant:

7	The possibility of determining the presence of imported goods in the compensating products should not be imposed as a necessary condition of inward processing when: (a) the identify of the goods can be established:	Recommended Practice
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	<ul style="list-style-type: none"> • by submitting the details of the inputs and the process of manufacture of the compensating products; or • during the processing operations by Customs control; or <p>(b) the procedure is terminated by the exportation of products obtained from the treatment of goods identical in description, quality and technical characteristics to those admitted for inward processing.</p>	
14	The requirements relating to the identification of goods for inward processing shall be laid down by the Customs. In carrying this out, due account shall be taken of the nature of the goods, of the operations to be carried out and of the importance of the interests involved.	Standard
17	Provision should be made for continuing inward processing in the event of transfer of ownership of the imported goods and the compensating products to a third person, provided that that person assumes the obligations of the person granted the authorization.	Recommended Practice
19	Provisions shall be made to permit compensating products to be exported through a Customs office other than that through which the goods placed under inward processing were imported.	Standard
20	Provision shall be made to permit inward processing procedures to be terminated by exportation of the compensating products in one or more consignments.	Standard

There are existing regulations in the Philippines which run counter to the following Standard of this Chapter, which needs to be amended and can be amended without need for an amendment of an existing law.

21	Upon request by the person concerned, the competent authorities shall authorize the re-exportation of the goods in the same state as imported, with termination of inward processing.	Standard
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There are existing laws in the Philippines which run counter to the following Standard and Recommended Practices of this Chapter, which will require an amendment of our laws.

3	Inward processing shall not be limited to goods imported directly from abroad, but shall also be granted for goods already placed under another Customs procedure.	Standard
10	When an application for inward processing is made after the importation of the goods and meets the criteria for authorization, the authorization should be granted retrospectively.	Recommended Practice
16	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend the period initially fixed.	Recommended Practice
22	Provision should be made for suspending or terminating inward processing by placing the imported goods or the compensating products under another Customs procedure, subject to compliance with the conditions and formalities applicable in each case.	Recommended Practice

25	The products obtained from the treatment of equivalent goods should be deemed to be compensating products for the purposes of this Chapter (setting-off with equivalent goods).	Recommended Practice
26	When setting-off with equivalent goods is allowed, the Customs should permit the exportation of compensating products prior to the importation of goods for inward processing.	Recommended Practice

Section 2001 to 2004 of the TCCP on Manufacturing Bonded Warehouse provide the legal basis for the conduct of mainstream inward processing in the country. A person intending to regularly undertake inward processing may apply for a license for his manufacturing/processing facility as a Customs Manufacturing Bonded Warehouse (CMBW). CAO 2-91 and CMO 31-91 were issued to implement these sections of the TCCP.

However, Section 2001 to 2004 and its implementing regulations cannot address many inward processing situations. The regulations on the operations of Common Bonded Warehouses partially address the requirements of small companies. Currently there are 10 common garments BW and 10 miscellaneous common BWs which have hundreds of members called subcontractors. However, a moratorium on the establishment of more common warehouses still in force hold after discovery of massive abuses of the facilities.

Section 105-d of the TCCP has also been used as a basis for inward processing, however, the regulations implementing the processing provision, CAO 3-78, had been revoked after discovery of abuses.

The breath of the inward processing as envisioned by this Specific Annex is not completely supported by current legislation. Inward processing as envisioned by this Specific Annex does not require the intermediation of CMBWs (regular or common), nor is it a requirement that the importer and the processor be one and the same be one and the same person. Also, unsupported is the termination of the process with “equivalent goods” rather than the goods imported.

In view of the need to amend some of our existing laws in order for us to be compliant with Standard 3, we recommend that we do not accept this Chapter of Specific Annex F.

b. Chapter 2: Outward Processing

There are existing laws in the Philippines which run counter to the following Standards and Recommended Practices of this Chapter, which will require an amendment of our laws.

1	Outward processing shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex.	Standard
2	Outward processing should not be refused solely on the grounds that the goods are to be manufactured, processed or repaired in a given country.	Recommended Practice
3	Temporary exportation of goods for outward processing shall not be restricted to the owner of the goods.	Standard
4	National legislation shall enumerate the cases in which prior authorization is required for outward processing and specify the authorities empowered to grant such authorization. Such cases shall be as few as possible.	Standard
5	Persons who carry out regular outward processing operations should, on request, be granted a general authorization covering such operations.	Recommended Practice
6	The competent authorities should fix a rate of yield for an outward processing operation when they deem it necessary	Recommended Practice

	or when it will facilitate the operation. The description, quality and quantity of the various compensating products shall be specified upon fixing that rate.	
7	The requirements relating to the identification of goods for outward processing shall be laid down by the Customs. In carrying this out, due account shall be taken of the nature of the goods, of the operation to be carried out and the importance of the interests involved.	Standard
8	The Customs shall fix the time limit for outward processing in each case.	Standard
9	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend the period initially fixed.	Recommended Practice
10	Provision shall be made to permit compensating products to be imported through a Customs office other than that through which the goods were temporarily exported for outward processing.	Standard
11	Provision shall be made to permit compensating products to be imported in one or more consignments.	Standard
12	Upon request by the person concerned, the competent authorities shall allow goods temporarily exported for outward processing to be re-imported with exemption from import duties and taxes if they are returned in the same state. This exemption shall not apply to import duties and taxes which have been repaid or remitted in connection with the temporary exportation of the goods for outward processing.	Standard
13	Unless national legislation requires the re-importation of goods temporarily exported for outward processing; provision shall be made for terminating the outward processing by declaring the goods for outright exportation subject to compliance with the conditions and formalities applicable in such case.	Standard
14	National legislation shall specify the extent of the exemption from import duties and taxes granted when compensating products are taken into home use, and the methods of calculation of that exemption.	Standard
15	The exemption from import duties and taxes provided for in respect of compensating products shall not apply to duties and taxes which have been repaid or remitted in connection with the temporary exportation of the goods for outward processing.	Standard
16	Where goods temporarily exported for outward processing have been repaired abroad free of charge, provision should be made for them to be re-imported with total exemption from import duties and taxes under the conditions laid down in national legislation.	Recommended Practice
17	The exemption from import duties and taxes should be granted if the compensating products were placed under another Customs procedure prior to being declared for home use.	Recommended Practice
18	The exemption from import duties and taxes should be granted if the ownership of the compensating products is transferred before they are taken into home use.	Recommended Practice

Compared to Inward Processing, real Outward Processing is not at present a significant business activity in the country. The only documented cases of outward processing pertains to articles that are easily identifiable and sent abroad for repairs like vessels and aircrafts and computers, equipment, machineries and parts. However there is optimism that with China providing cheap labor and excess manufacturing capacity, outward processing of raw materials will take-on and prosper in the future.

The following subsection of Section 105 of the TCCP are the relevant provisions dealing with outward processing:

(c) “cost of repairs, excluding the value of the article used, made in foreign countries upon vessels and aircrafts documented, registered or licensed in the Philippines...” shall be qualified as conditionally free.

(x) “articles of easy identification exported from the Philippines for repair and subsequently re-imported...” shall be qualified as conditionally free imports. There are no provisions dealing with goods (particularly raw materials) in free circulation sent abroad for manufacturing or processing for subsequent re-importation to the Philippines, and

(t) deals with “Philippine articles previously exported and returned” which provides that the article must not have been advanced in value or improved in condition by any process of manufacture or other means...”

It may be said therefore that Philippine national legislation is not compliant with articles sent abroad for repairs which is covered by Section 105(x).

We recommend that the country not accept this Annex for the time being to facilitate the country's accession to the RKC, and that a survey be undertaken to ascertain if there is significant outward processing business activity not covered by the existing legislation to justify amending the law. Only then should the country again consider accepting this specific Annex.

c. Chapter 3: Drawback

There are existing regulations in the Philippines which run counter to the following Standard of this Chapter, which needs to be amended and can be amended without need for an amendment of an existing law.

4	The Customs shall not withhold payment of drawback solely because, at the time of importation of the goods for home use, the importer did not state his intention of claiming drawback at exportation. Similarly, exportation shall not be mandatory when such a statement has been made at importation.	Standard
8	National legislation should provide for the use of electronic funds transfer for the payment of drawback.	Recommended Practice

There are existing laws in the Philippines which run counter to the following Recommended Practices of this Chapter, which will require an amendment of our laws.

3	National legislation should include provision for the application of the drawback procedure in cases where the goods which have borne import duties and taxes have been replaced with equivalent goods used in the production of exported goods.	Recommended Practice
5	Where a time-limit for the exportation of the goods is fixed beyond which they no longer qualify for drawback, this	Recommended Practice

	should, upon request, be extended if the reasons are deemed valid by the Customs.	
6	Where a time-limit is fixed beyond which claims for drawback will not be accepted, provision should be made for its extension for commercial or other reasons deemed valid by the Customs.	Recommended Practice
9	Drawback should also be paid on deposit of goods in a Customs warehouse or introduction of the goods into a free zone, on condition that they are subsequently to be exported.	Recommended Practice
10	The Customs should, if so requested, pay drawback periodically on goods exported during a specified period.	Recommended Practice

In view of the need to amend certain existing laws for us to be compliant with the above Recommended Practices, we recommend the acceptance of this Chapter of Specific Annex F, subject to making express reservations on the above.

d. Chapter 4: Processing of Goods for Home Use

Processing of goods for home use means the Customs procedure under which imported goods may be manufactured, processed or worked under Customs control before clearance for home use. The procedure could lower the amount of the import duties and taxes payable since the product(s) of the operation may have a lower tariff rate, value and quantity compared to those of the imported goods.

The differences of this procedure with the private warehousing operations under Section 1901-08 of the TCCP are as follows:

1. The duties and taxes payable under the processing for home use is computed based on the value, classification and quantity of the outputs, not on the imported material or input as is the case under while under Sec 1901-08 of the TCCP
2. As contemplated, the rate of duty on the output product(s) for most inward processing for home use operations would be lower than the applicable rates on the imported inputs (although it may the same or even). The kinds of businesses that would avail of the procedure are those would not be normally be viable if managed under Sec 1901. For example, it may be considered in the economic interest for more than 5 year old motor to be imported for purposes of recovering usable parts. If duties and taxes were to be paid based on the 30% rate of duty of cars and their depreciated value, the cost of the output products would be prohibitive. But these cars are first broken down into their component into parts and then allowed to enter the customs territory as parts as would be the case under processing for home use, then the operations may be prove viable.

In theory, the operations of free ports and freezones can support these operations. If allowed by zone authorities, payment of customs duties and taxes shall be based on the output goods and not on the imported inputs to the processing.

To be compliant with the provisions of this Annex, the procedure must be allowed in the customs territory as well. Under the Code, the only way goods may be brought in for manufacturing or processing or eventual home use is thru Section 1908, which runs counter to our existing law. In view of the foregoing, we recommend we not accept this Chapter at this time.

3.3.2.7 Specific Annex G : Processing

a. Chapter 1 : Inward Processing

Philippine national legislation is silent as to the following Standards and Recommended Practice of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of

Customs Operations need to be issued as a regulation expressly including this Recommended Practice for us to be compliant:

5	Temporary admission should be granted without regard to the country of origin of the goods, the country from which they arrived or their country of destination.	Standard
6	Temporarily admitted goods shall be allowed to undergo operations necessary for their preservation during their stay in the Customs territory.	Standard
12	For the purpose of identifying goods temporarily admitted, the Customs should take their own identification measures where commercial means of identification are not sufficient.	Recommended Practice
15	When the goods granted temporary admission cannot be re-exported as a result of seizure other than a seizure made at the suit of private persons, the requirement of re-exportation should be suspended for the duration of the seizure,	Recommended Practice
16	On request, the Customs should authorize the transfer of the benefit of the temporary admission to any other person, provided that such other person: (a) satisfies the conditions laid down; and (b) accepts the obligations of the first beneficiary of the temporary admission.	Recommended Practice
17	Provision shall be made to permit temporarily admitted goods to be re-exported through a Customs office other than that through which they were imported.	Standard
18	Provision shall be made to permit temporarily admitted goods to be re-exported in one or more consignments.	Standard

There are existing regulations in the Philippines which run counter to the following Standard of this Chapter, which needs to be amended and can be amended without need for an amendment of an existing law.

11	Temporary admission of goods shall be subject to the condition that the Customs are satisfied that they will be able to identify the goods when the temporary admission is terminated.	Standard
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There are existing laws in the Philippines which run counter to the following Recommended Practices of this Chapter, which will require an amendment of our laws.

9	The Customs should grant temporary admission without written Goods declaration when there is no doubt about the subsequent re-exportation of the goods.	Recommended Practice
10	Contracting Parties should give careful consideration to the possibility of acceding to international instruments relating to temporary admission that will enable them to accept documents and guarantees issued by international organizations in lieu of national Customs documents and security.	Recommended Practice
14	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend the period initially fixed.	Recommended Practice
19	Provision should be made for suspending or terminating temporary admission by placing the imported goods under another Customs procedure, subject to compliance with the	Recommended Practice

	conditions and formalities applicable in each case.	
21	If security has been given in the form of a cash deposit, provision should be made for it to be repaid at the office of re-exportation, even if the goods were not imported through that office.	Recommended Practice
23	Goods which are not included in Recommended Practice 22 and goods in Recommended Practice 22 which do not meet all the conditions for total conditional relief should be granted temporary admission with at least partial conditional relief from import duties and taxes.	Recommended Practice

In view of the need to amend some of our existing laws in order for us to be compliant with the above Recommended Practices, we recommend that we accept this Specific Annex subject to the reservations of the above enumerated Recommended Practices.

3.3.2.8 Specific Annex H : Offences

a. Chapter 1 : Customs Offences

Philippine national legislation is silent as to the following Standards and Recommended Practice of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including this Recommended Practice for us to be compliant:

6	Personal searches for Customs purposes shall be carried out only when there are reasonable grounds to suspect smuggling or other Customs offences which are regarded as serious.	Standard
10	The Customs should set out the particulars of Customs offences and the measures taken in offence reports or administrative records.	Recommended Practice
19	The Customs shall take the necessary measures to ensure, where applicable, that as soon as possible after a Customs offence is discovered: <ul style="list-style-type: none"> • the administrative settlement of the latter is initiated; and • the person concerned is informed about the terms and conditions of the settlement, the avenues of appeal and the time limits for such appeals. 	Standard

There are existing laws in the Philippines which run counter to the following Standard and Recommended Practices of this Chapter, which will require an amendment of our laws.

15	The Customs should release from seizure or detention means of transport that have been used in the commission of a Customs offence when they are satisfied that: <ul style="list-style-type: none"> • the means of transport have not be constructed, adapted or altered or fitted in any manner for the purpose of concealing goods; and • the means of transport are not required to be produced as evidence at some later stage in the procedure; and • where required, adequate security can be given. 	Recommended Practice
21	Where a traveler is regarded as having committed a Customs offence of minor importance, it should be possible	Recommended Practice

	for the offence to be settled without delay by the Customs office which discovers it.	
25	Where Customs offence occurs as a result of force majeure or other circumstances beyond the control of the person concerned and there is no question of negligence or fraudulent intent on his part, no penalty shall be applied provided that the facts are duly established to the satisfaction of the Customs.	Standard

In view of the need to amend some of our existing laws in order for us to be compliant with Standard 25, we recommend that we do not accept this Specific Annex.

3.3.2.9 Specific Annex J : Special Procedures

a. Chapter 1 : Travelers

Philippine national legislation is silent as to the following Standards and Recommended Practice of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including this Recommended Practice for us to be compliant:

2	The Customs facilities provided for in this Chapter shall apply to travelers irrespective of their citizenship/nationality.	Standard
15	Wherever possible, the use of credit cards or bank cards should be acceptable as a means of payment for services rendered by the Customs and for duties and taxes.	Recommended practice
24	Fuel carried in the normal tanks of the means of transport for private use shall be admitted free of import duties and taxes.	Standard
25	The facilities granted in respect of means of transport for private use shall apply whether the means of transport are owned, rented or borrowed by non-residents and whether they arrive with, before or after the traveler.	Standard
31	The Customs shall allow non-residents' temporarily admitted goods to be re-exported through a Customs office other than that through which they were imported.	Standard
37	If security has been given in the form of a cash deposit, provision should be made for it to be repaid at the office of re-exportation, even if the goods were not imported through that office.	Recommended Practice
39	Information concerning the Customs facilities applicable to travelers should be made available in the official language or languages of the country concerned and in any other language deemed to be useful.	Recommended Practice

There are existing laws in the Philippines which run counter to the following Recommended Practices of this Chapter, which will require an amendment of our laws.

9	Travelers should be permitted to make an oral declaration in respect of the goods carried by them. However, the Customs may require a written or electronic declaration for goods carried by travelers which constitute an importation or exportation of a commercial nature or which exceed, in value or quantity, the limits laid down in national legislation.	Recommended practice
14	A system of flat-rate assessment should be applied to goods declared for home use under the facilities applicable to travelers, provided that the importation is of a non-	Recommended practice

	commercial nature and that the aggregate value or quantity of the goods does not exceed the amounts laid down in national legislation.	
16	<p>The quantities of tobacco goods, wine, spirits and perfume allowed to be imported free of import duties and taxes by travelers should be not less than:</p> <p>(a) 200 cigarettes or 50 cigars or 250 grams of tobacco, or an assortment of these products of a total weight not exceeding 250 grams;</p> <p>(b) 2 litres of wine or 1 litre of spirits;</p> <p>(c) ¼ litre of toilet water and 50 grams of perfume.</p> <p>The facilities provided for tobacco goods and alcoholic beverages may, however, be restricted to persons who have reached a certain age and may not be granted, or may be granted in reduced quantities only, to persons who cross the border frequently or who have been out of the country for less than 24 hours.</p>	Recommended practice
17	In addition to the consumable products allowed to be imported free of import duties and taxes within specified quantitative limits, travelers should be permitted to import, free of import duties and taxes, goods of a strictly non-commercial nature up to an aggregate value of 75 Special Drawing Rights (SDRs). A lower amount may be fixed for persons less than a certain age or for persons who cross the frontier frequently or who have been out of the country for less than 24 hours.	Recommended practice

In view of the need to amend certain existing laws for us to be compliant with the above Recommended Practices, we recommend the acceptance of this Chapter of Specific Annex J, subject to making express reservations on the above.

b. Chapter 2: Postal Traffic

Philippine national legislation is silent as to the following Standards and Recommended Practice of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including this Standard and Recommended Practice for us to be compliant:

4	The exportation of goods in postal items shall be allowed regardless of whether they are in free circulation or are under a Customs procedure.	Standard
5	The importation of goods in postal items shall be allowed irrespective of whether they are intended to be cleared for home use or for another Customs procedure.	Recommended Practice

There are existing regulations in the Philippines which runs counter to the following Standard of this Chapter, which needs to be amended and can be amended without need for an amendment of an existing law.

10	Postal items shall not be subject to Customs formalities whilst they are being conveyed in transit.	Standard
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There are existing laws in the Philippines which run counter to the following Recommended Practices of this Chapter, which will require an amendment of our laws.

9	<p>When all the information required by the Customs is available from the CN22 or CN23 and supporting documents, the form CN22 or CN23 shall be the Goods declaration, except in the case of:</p> <ul style="list-style-type: none"> • goods having a value exceeding an amount specified in national legislation; • goods which are subject to prohibitions or restrictions or to export duties and taxes; • goods the exportation of which must be certified; • imported goods intended to be placed under a Customs procedure other than clearance for home use. <p>In these cases, a separate Goods declaration shall be required.</p>	Recommended Practice
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In view of the need to amend certain existing laws for us to be compliant with the above Recommended Practices, we recommend the acceptance of this Chapter of Specific Annex J, subject to making express reservations on the above.

c. Chapter 3: Means of Transport for Commercial Use

Philippine national legislation is silent as to the following Standard and Recommended Practice of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including this Recommended Practice for us to be compliant:

3	<p>Means of transport for commercial use, whether loaded or not, should be allowed to be brought temporarily into a Customs territory conditionally relieved from payment of import duties and taxes, provided that such means of transport for commercial use are not used for internal transport in the Customs territory of the country of temporary admission. They must be intended for re-exportation without having undergone any change except normal depreciation due to their use, normal consumption of lubricants and fuel and necessary repairs.</p>	Recommended Practice
11	<p>No documents to be produced to or lodged with the Customs in connection with the arrival of means of transport for commercial use arrive.</p>	Standard

There are existing regulations in the Philippines which runs counter to the following Standard of this Chapter, which needs to be amended and can be amended without need for an amendment of an existing law.

10	<p>The Customs shall reduce, as far as possible, the number of copies of the declaration of arrival required to be submitted to them.</p>	Standard
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There are existing laws in the Philippines which runs counter to the following Standard and Recommended Practices of this Chapter, which will require an amendment of our laws.

13	<p>Customs formalities applicable upon the departure of means of transport for commercial use from the Customs territory shall be limited to measures to ensure that:</p>	Standard
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	<ul style="list-style-type: none"> (a) where required, a declaration of departure is duly lodged with the competent Customs office; (b) where appropriate, Customs seals are affixed; (c) where required for control purposes, specified Customs routes are followed; and (d) no unauthorized delay occurs in the departure of means of transport for commercial use. 	
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In view of the need to amend certain existing laws for us to be compliant with the above Standard, we recommend that we do not accept this Chapter at this time.

d. Chapter 4: Stores

Philippine national legislation is silent as to the following Standards and Recommended Practice of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including this Recommended Practice for us to be compliant:

2	Customs treatment of stores should apply equally, regardless of the country of registration or ownership of vessels, aircraft or trains.	Recommended Practice
6	When a declaration concerning stores on board vessels arriving in the Customs territory is required by the Customs, the information required shall be kept to the minimum necessary for the purposes of Customs control.	Standard
7	The quantities of stores which are allowed by the Customs to be issued from the stores held on board should be recorded on the declaration concerning stores produced to the Customs upon arrival of the vessel in the Customs territory and no separate form should be required to be lodged with the Customs in respect thereof.	Recommended Practice
11	The Customs should allow the issue of stores for consumption on board by the crew while the vessel is undergoing repairs in a dock or shipyard, provided that the stay in a dock or shipyard is considered to be of reasonable duration.	Recommended Practice
12	When an aircraft is to land at one or more airports in the Customs territory, the Customs should allow the issue of stores for consumption on board both during the stay of the aircraft at such intermediate airports and during its flight between such airports.	Recommended Practice
13	The Customs shall require the carrier to take appropriate measures to prevent any unauthorized use of the stores including sealing of the stores, when necessary.	Standard
14	The Customs shall require the removal of stores from vessel, aircraft or train for storage elsewhere during their stay in the Customs territory only when they consider it necessary.	Standard
20	Stores on board vessels, aircraft and trains having arrived in the Customs territory shall be allowed: <ul style="list-style-type: none"> (a) to be cleared for home use or to be placed under another Customs procedure, subject to compliance with the conditions and formalities applicable in each case; (b) subject to prior authorization by the Customs, to be transferred respectively to other vessels, aircraft or 	Standard

	trains in international traffic.	
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We recommend we accept this Chapter of Specific Annex J without any reservation.

e. Chapter 5: Relief Consignments

Philippine national legislation is silent as to the following Standards and Recommended Practice of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including this Recommended Practice for us to be compliant:

2	Clearance of relief consignments for export, transit, temporary admission and import shall be carried out as a matter of priority.	Standard
3	In case of relief consignments the Customs shall provide for: <ul style="list-style-type: none"> • Lodging of a simplified Goods declaration or of a provisional or incomplete Goods declaration subject to completion of the declaration within a specified period; • Lodging and registering or checking of the Goods declaration and supporting documents prior to the arrival of the goods, and their release upon arrival; • Clearance outside the designated hours of business or away from Customs offices and the waiver of any charges in this respect; and • Examination and/or sampling of goods only in exceptional circumstances. 	Standard
4	Clearance of relief consignments should be granted without regard to the country of origin, the country from which arrived or country of destination.	Recommended Standard

We recommend we accept this Chapter of Specific Annex J without any reservation.

3.3.2.10 Specific Annex K : Origin

a. Chapter 1 : Rules of Origin

We should accept this Chapter of Specific Annex K since our national legislation is already fully compliant with the Standards and Recommended Practices contained herein for the following reasons:

- The Philippines is a signatory to the Agreement Establishing the WTO which together with the Supplemental Agreements have been ratified by the President and concurred to by the Senate. One of these agreements which now forms part of the law of the land is the WTO Rules of Origin. The two main principles governing the origin rules under the WTO are wholly produced or obtained goods and substantial transformation. These are likewise the two main principles underlying the RKC origin rules.
- The country being a member of ASEAN is a signatory to both AFTA and the ASEAN-China Free Trade Area (ACFTA). As such it is bound by the rules of origin under both agreements which, among others, provide alternative criteria on substantial transformation including Product Specific Rules. The WTO allows certain “departures” from the general rules for economic and regional groupings such as the ASEAN.
- The Rules of Origin for the CEPT Scheme of AFTA together with the Operational Certification Procedures already reflects all the standards and recommended practices under the RKC rules of origin. This plus the fact that the RKC Rules of Origin are aligned

with the WTO rules are basis to conclude that Philippine national legislation on rules of origin are compliant with the RKC.

b. Chapter 2: Documentary Evidence of Origin

Philippine national legislation is silent as to the following Recommended Practices of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including this Recommended Practices for us to be compliant:

3	<p>Documentary evidence of origin should not be required in the following cases:</p> <ul style="list-style-type: none"> (a) goods sent in small consignments addressed to private individuals or carried in travellers' baggage, provided that such importations are of a non-commercial nature and the aggregate value of the importation does not exceed an amount which shall not be less than US\$ 100.00; (b) commercial consignments the aggregate value of which does not exceed an amount which shall not be less than US\$ 60; (c) goods granted temporary admission; (d) goods carried in Customs transit; (e) goods accompanied by a regional appellation certificate as well as certain specific goods, where the conditions to be met by the supplying countries under bilateral or multilateral agreements relating to those goods are such that documentary evidence need not be required. <p>Where several consignments of the kind referred to in (a) or (b) are sent at the same time, by the same means, to the same consignee, by the same consignor, the aggregate value shall be taken to be the total value of those consignments.</p>	Recommended Practice
4	<p>When rules relating to the requirement of documentary evidence of origin have been laid down unilaterally, they should be reviewed at least every three years to ascertain whether they are still appropriate in the light of changes in the economic and commercial conditions under which they were imposed.</p>	Recommended Practice
8	<p>Where the certificate of origin is made out in a language that is not a language of the country of importation, the Customs of that country should not require, as a matter of course, a translation of the particulars given in the certificate of origin.</p>	Recommended Practice
12	<p>Where documentary evidence of origin is required, a declaration of origin should be accepted in the following cases:</p> <ul style="list-style-type: none"> • goods sent in small consignments addressed to private individuals or carried in travellers' baggage, provided that such importations are of a non-commercial nature and the aggregate value of the importation does not exceed an amount which shall not be less than US\$ 500; • commercial consignments the aggregate value of which does not exceed an amount which shall not be less than US\$ 300. 	Recommended Practice

	Where several consignments of the kind referred to in (a) and (b) are sent at the same time, by the same means, to the same consignee, by the same consignor, the aggregate value shall be taken to be the total value of those consignments.	
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We recommend we accept this Chapter of Specific Annex K without any reservation.

c. Chapter 3: Control of Documentary Evidence of Origin

Philippine national legislation is silent as to the following Standard of this Chapter of the Specific Annex, for which guidelines in the form of a Manual of Customs Operations need to be issued as a regulation expressly including this Standard for us to be compliant:

2	The competent authority of the Contracting Party which has received a request for control need not comply with it if the competent authority of the requesting Contracting Party would be unable to furnish that assistance if the positions were reversed.	Standard
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We recommend we accept this Chapter of Specific Annex J without any reservation.

4.0 Proposed National Strategy for Compliance

4.1 Background

The Partnership and Advocacy for Competitiveness and Trade (PACT) Project*, in coordination with the Export Development Council (EDC), commissioned the project “Research and Advocacy Support for Trade Facilitation: Philippine Compliance with the Revised Kyoto Convention.”

Compliance and accession to the RKC is an important component of the national strategy for competitiveness presented to the President during the Competitiveness Summit. The ASEAN member countries have also agreed to modernize their respective Customs Administrations along the standards and recommended practices of the RKC.

The methodology utilized in the project is Gap Analysis. The procedure identified the Standards, Transitory Standards and Recommended Practices of the RKC for which National Legislation is non-compliant. Part of the analysis is the identification of the “compliance gaps” or the reasons for non-compliance as well as of measures to remove the gaps. With the gaps and measures to remove the gaps as data, a recommended pathway to compliance and accession was crafted and presented to the stakeholders and other concerned institutions as follows:

- The Applicability Analysis, the Gap Analysis and the Draft National Strategy for Compliance were posted in the Philippine website (www.rkcphil.net) inviting stakeholders to comment thereon.
- A Pre-summit on the National Strategy for RKC Compliance when the Gaps and measures to remove the Gaps was conducted. The objective of the Pre-Summit was to make the participants (Customs, business, academe, concerned government departments and other concerned groups) to agree to a 3-stage timetable for RKC Compliance.

* A Project being implemented by the DLSU-Angelo King Institute for Economic and Business Studies, in partnership with Philippine Exporters Confederation (PhilExport) under the Targeted Interventions in Economic Reform and Governance (TIERG).

- A Summit on the National Strategy for Compliance and Pathway to Accession was held as part of the activities commemorating the 2007 founding anniversary celebration of the Bureau of Customs at the Summit, the leaders of various business groups signed a joint letter to the President expressing support to the national strategy and endorsing the accession of the country to the RKC.

4.2 Stages of RKC Compliance

While majority of the Standards, Transitory Standards and Recommended Practices of the RKC are already expressed in and are aligned with the laws, orders, rules and regulations of the country particularly in Customs, a significant number are not and for several of these are even inconsistent with national legislation. Some of the RKC provisions can easily be complied with by issuing new orders, rules or regulations or modifying existing ones. Others need development of enabling systems including ICT systems for its implementation. Still others need amendment of existing laws, and this may take time this year 2007 which is an election year.

A strategy of compliance with three (3) stages will address the following objectives:

- Immediate implementation of majority of the provisions of the RKC.
- Earliest possible announcement of Philippine accession to the RKC.
- Multi-sectoral advocacy for the RKC and private sector and donor agency support in the development of the needed capabilities in Customs and the passage of required laws.
- Need for a continuing review of the country's compliance status and follow-up action.

The three (3) stages for RKC Compliance and Accession that would respond to all of the above objectives are the following:

- 1st Stage:

Upon the President's signing of the Instrument of Accession to the RKC accepting the Body of the Convention, the General Annex and those Specific Annexes that will not require amendment of Customs and related laws, (save for a handful of important standards) execution of the activities listed in 3.0 below.

- 2nd Stage:

Upon concurrence of 2/3 of all members of the Senate of the Instrument of Accession, execution of the activities listed in 4.0 to more effectively implement the standards and recommended practices that are accepted under the instrument of accession.

- 3rd Stage:

After depositing the Letter of Accession to the WCO, execution of the activity listed in 5.0. Also part of this stage, Specific Annexes standards and recommended practices that were recommended for issuance of reservation(s) shall be subject to periodic review by the Kyoto Convention Task Force consisting of members of the RKC Coalition which must be already organized for this purpose.

4.3 1st Stage Activities

4.3.1 General Announcement and Order

An Executive Order will be issued immediately mandating the following:

- Compliance by all concerned government agencies to all standards and recommended practice in the General Annex as well as the accepted standards and recommended practices in the specific annexes that are not against or inconsistent with current laws.
 - The instruction shall include concerned agencies submitting a list of their existing regulations inconsistent with these standards and recommended practice and their timetable for aligning their regulations accordingly.
 - All standards and practices for which national legislation is silent (C-3) shall be annexed in the Executive Order with instructions to the agencies concerned to issue implementing regulations to make clear observance of the provisions as part of national legislation.
- 4.3.2 Issuance of a general amendatory IRR for those standards and accepted practices not inconsistent with the Code but are inconsistent with national legislation (C-1) except where the inconsistency is in the Customs and other laws.

The Summit output shall be an endorsement to the President thru the Secretary of Finance of the National Strategy, a copy of which is attached hereto as Annex E.

4.4 2nd Stage Activities

4.4.1 Preparation of a Manual of Customs Operations structured along the lines of the RKC particularly of the Specific Annexes.

- Instead of reviewing all customs memorandum orders and amending the same to be able bring into force nationally all the basic rules from the General Annex as well as the accepted Standards and Recommended Practices of the Specific Annexes, a more expedient approach is to develop a Manual of Customs Operations detailing the regulations, systems and procedures for their implementation except those needing amendment of existing laws.
- The Manual must be structured along the lines of the RKC and must have a section for each of the specific annexes of the Convention.
- The manual must incorporate in the systems and procedures, the various RKC standards and practices accepted as provided in the National Strategy and the Instrument of Accession.
- Draft Manual initially containing the areas of operation covered by the RKC must be presented to the experts group (customs and port users) to identify other common questions on Customs that must likewise be covered in the Customs Manual.

4.4.2 Private Sector and Donor Agency Participation in the Manualization of Customs Operations and Compliance

The Convention standards and practices to which the country has not complied with must be prioritized for assignment to private sector groups for the drafting of compliance of enabling systems and implementing regulations. Donor agencies' assistance may be sought for those needing the development of systems or expertise for the proper implementation. For example, should transitory standard 3.32 on authorized persons and special procedures be recommended and agreed upon for acceptance, a volunteer private sector group must already develop the system and procedure for its implementation even ahead of RKC accession.

4.5 3rd Stage Activities

- Drafting of Amendatory Laws for those provisions of the RKC that are inconsistent with current laws (Strategy for Compliance S-1).

- Continuing review of Annexes/Chapters not accepted and reservations entered for possible acceptance or withdrawal of reservations.

4.6 Endorsement to the President of the RKC National Strategy

It is the aspiration that the Secretary of Finance, the Commissioner of Customs and the various concerned groups will present to the President the National Strategy for RKC Compliance and Summit Outputs on or the occasion of the 105th Anniversary of the Bureau of Customs, February 6, 2007.

4.7 Required Executive Actions

Should the RKC Summit favorably endorse this National Strategy for RKC, the following documents will be prepared:

1. Customs Report on the Benefits of Accession, the Specific Annexes recommended for Acceptance and the Reservations to particular provisions, a draft of which is attached hereto as Annex F,
2. Department of Finance letter of indorsement of the Customs Report to the Department of Foreign Affairs with the Stakeholder Groups Indorsements attached, a draft of which is attached hereto as Annex G,
3. Department of Foreign Affairs Draft Instrument of Accession for the signature of the President, a draft of which is attached hereto as Annex H,
4. Draft Letter of the President to the Senate requesting advice and concurrence to accession to the Convention, a copy of which is attached hereto as Annex I,
5. Draft Senate resolution concurring to our accession to the Convention, and
6. Draft Letter to the WCO transmitting the Instrument of Accession.

5.0 Investment Plan

5.1 Objectives

1. Signing of the Instrument of Accession and Senate Resolution of Concurrence/ Approval on or before 31 December 2007.
2. Maximum international dissemination of Philippine Accession thru Philippine offices of foreign governments and businesses of the Instrument of Accession, Senate Resolution and the Deposit of the Instrument of Accession. The period covered will approximately be ten (10) months.
3. Overall attainment of the objectives of the National Strategy within the Timeframes Set.

5.2 Investment Components

<p>Advocacy Website</p> <ul style="list-style-type: none"> ○ Maintenance and Administration of www.rkcphil.net including responding to the queries, comments and inputs from the public. This will run for three (3) years, beginning March 1, 2007, which is the approximate period within which the laws and other legislations will be made consistent with most if not all of the RKC standards and recommended practices. Part of this will 	<p>Php 2,000,000.00</p>
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<ul style="list-style-type: none"> o be periodic advertisement to visit the website. o Pro-active dissemination of relevant information thru conferences, meetings and mail to target offices and groups. o Preparation of Presentation Materials and Printed Information Materials (updates and progress reports). 	
<p>Codification and Manualization of Customs Operations</p> <p>Utilize RKC terminologies</p> <p>Organized along RKC structure</p> <p>Reflect the general principles, standards and recommended practices which are:</p> <ul style="list-style-type: none"> o among Specific Annexes and Chapters accepted as well as standards and recommended practices not recommended for reservation; and/or o not against nor inconsistent with current legislation <p>RKC Compliance Center. – A Memorandum of Agreement will be entered into between the Center and the Bureau of Customs whereby the updating and maintenance of the Customs Operations will be vested upon the Center.</p> <p>Budget will be for three years operation of the Center</p>	5,000,000.00
<p>Enabling Systems; Development of Identification of and development</p> <p>Trade and Transport Facilitation Group: to set the level of documentary inspections and physical examinations to comply with Standard 31, Chapter 3 of the General Annex.</p> <ul style="list-style-type: none"> o Risk Mgt Systems that would determine the ideal level of selections o Development of business analytics doctrine: methods, organization and training. <p>Transitory Standard 32 – Authorized Persons and Special Procedures.</p> <ul style="list-style-type: none"> o Research and Study on how other countries implement o Develop Philippine procedure and enabling support systems <p>Standard 3.35</p> <ul style="list-style-type: none"> o Provide ICT system with database of interventions needed by HS Code and automated procedure for notifying agencies concerned of presence of shipments and goods declarations needing interventions. <p>Others</p>	5,000,000.00
<p>Legislation</p> <p>Drafting and passage of needed laws</p> <p>Drafting of Model Customs Code</p> <p>Drafting of Implementing Orders, Rules and Regulations</p>	5,000,000.00
<p>Program Implementation and Monitoring</p> <p>RKC Compliance Management Organization</p> <p>Organize a core group and provide training on the RKC, the National Strategy for Compliance and equip them with the means to assess progress of work and take measures to respond to deviations from set plans</p> <p>Secretariat and PMIU — will be responsible for the day to day operations of the Center</p> <p>Office-Center should be provided with adequate office facilities and equipment. Consider obtaining office in Customs itself so Executive Director can work alongside with the Chairman KCMT in the execution of the National Plan</p>	3,000,000.00
TOTAL	Php 20,000,000.00

General Annex Gap Analysis: Compliant Provisions

- **General Annex Gap Analysis: Compliant Provisions: LEGEND**
 - **Chapter 3: Clearance and Other Customs Formalities**
 - **Competent Customs offices**
 - Standard 3.1
 - Standard 3.2
 - **The declarant**
 - a. Persons entitled to act as declarant
 - Standard 3.6
 - b. Responsibility for particulars given
 - Standard 3.8
 - c. Rights of the declarant
 - Standard 3.10
 - **The Goods declaration**
 - a. Contents and format of the Goods declaration
 - Standard 3.11
 - Standard 3.12
 - Standard 3.13
 - Standard 3.14
 - Standard 3.15
 - b. Documents Supporting the Goods declaration
 - Standard 3.16
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 - Transitional Standard 3.18
 - Transitional Standard 3.21
 - Standard 3.22
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 - Standard 3.27
 - Standard 3.30
 - Standard 3.31
 - **Examination of the goods**
 - a. Time required for examination of goods
 - Standard 3.33
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 - Standard 3.38
 - **Errors**
 - Standard 3.39
 - **Release of goods**
 - Standard 3.40
 - Standard 3.42
 - Standard 3.43
 - **Abandonment or destruction of goods**
 - Standard 3.44
 - Transitional Standard 3.45
 - **Chapter 4: Duties and Taxes**
 - **A. Assessment, Collection and Payment of Duties and Taxes**
 - Standard 4.1
 - Standard 4.2
 - Standard 4.3
 - Standard 4.4
 - Standard 4.5

- [Standard 4.6](#)
 - [Standard 4.7](#)
 - [Standard 4.8](#)
 - [Standard 4.11](#)
 - [Standard 4.12](#)
 - [Transitional Standard 4.13](#)
 - [Standard 4.14](#)
 - **B. Deferred Payment of Duties and Taxes**
 - [Standard 4.15](#)
 - [Standard 4.16](#)
 - [Standard 4.17](#)
 - **C. Repayment of Duties and Taxes**
 - [Standard 4.18](#)
 - [Standard 4.23](#)
 - [Standard 4.24](#)
- **Chapter 5: Security**
 - [Standard 5.1](#)
 - [Standard 5.2](#)
 - [Standard 5.3](#)
 - [Standard 5.4](#)
 - [Standard 5.5](#)
- **Chapter 6: Customs Control**
 - [Standard 6.1](#)
 - [Standard 6.2](#)
 - [Standard 6.3](#)
 - [Standard 6.4](#)
 - [Standard 6.6](#)
 - [Transitional Standard 6.9](#)
- **Chapter 8: Relationship between the Customs and Third Parties**
 - [Standard 8.2](#)
 - [Standard 8.6](#)
 - [Standard 8.7](#)

General Annex Gap Analysis: Compliant Provisions

LEGEND:	
P	Provision of RKC
G	RKC Guidelines
N	Notes on Compliance

Chapter 3: Clearance and Other Customs Formalities

Competent Customs offices

Standard 3.1

Establishment and designation of a Customs office

P	The Customs shall designate the Customs offices at which goods may be produced or cleared. In determining the competence and location of these offices and their hours of business, the factors to be taken into account shall include in particular the requirements of the trade.
N	TCCP Sec 701, 702, 703

Standard 3.2

Hours of business and places of clearance

P	At the request of the person concerned and for reasons deemed valid by the Customs, the latter shall, subject to the availability of resources, perform the functions laid down for the purposes of a Customs procedure and practice outside the designated hours of business or away from Customs offices. Any expenses chargeable by the Customs shall be limited to the approximate cost of the services rendered.
N	TCCP Sec 3506

The declarant

a. Persons entitled to act as declarant

Standard 3.6

P	National legislation shall specify the conditions under which a person is entitled to act as declarant.
N	TCCP 1301 as amended by RA 9280

b. Responsibility for particulars given

Standard 3.8

P	The declarant shall be held responsible to the Customs for the accuracy of the particulars given in the Goods declaration and the payment of the duties and taxes.
N	Code clearly defines liability and penalty for wrongful declaration and the declaration is subscribed to.

c. Rights of the declarant

Standard 3.10

Goods declaration for samples

P	The Customs shall not require a separate Goods declaration in respect of samples allowed to be drawn under Customs supervision, provided that such samples are included in the Goods declaration concerning the relevant consignment.
N	Silent but observed since obtaining of samples is after declaration.

The Goods declaration

a. Contents and format of the Goods declaration

Standard 3.11

P	The contents of the Goods declaration shall be prescribed by the Customs. The paper format of the Goods declaration shall conform to the UN-layout key. For automated Customs clearance processes, the format of the electronically lodged Goods declaration shall be based on international standards for electronic
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	information exchange as prescribed in the Customs Co-operation Council Recommendations on information technology.
N	Legislation provides use of UN Layout Key and ICT uses SAD.

Standard 3.12

Minimum data requirements

P	The Customs shall limit the data required in the Goods declaration to only such particulars as are deemed necessary for the assessment and collection of duties and taxes, the compilation of statistics and the application of Customs law.
N	Legislation follows 56 field SAD but will be reduced to 48 ASEAN common data elements

Standard 3.13

Provisional or incomplete declaration

P	Where, for reasons deemed valid by the Customs, the declarant does not have all the information required to make the Goods declaration, a provisional or incomplete Goods declaration shall be allowed to be lodged, provided that it contains the particulars deemed necessary by the Customs and that the declarant undertakes to complete it within a specified period.
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Standard 3.14

Tariff treatment of Incomplete Goods Declaration

P	<p>If the Customs register a provisional or incomplete Goods declaration, the tariff treatment to be accorded to the goods shall not be different from that which would have been accorded had a complete and correct Goods declaration been lodged in the first instance.</p> <p>The release of the goods shall not be delayed provided that any security required has been furnished to ensure collection of any applicable duties and taxes.</p>
N	<ul style="list-style-type: none"> • CMO 37-2001 - Revised Cargo Clearance Procedure to Implement R.A. 9135 and CAO 5-2001 • CMO 3-2000 - Enhanced Cargo Clearance Procedures with provisions of Tentative Release • CMO 10-2000 - Detailed Procedures to Further Implement CMO 3-2000 • CMO 4-1999 - Treatment of Cash/Check Guarantee for Tentative Released Shipments or Submission of Required Documents to Secure Payment of Duties, Taxes and Other Charges • CMO 20-2004 - Consolidation and Revision of CMO 1-96, A, B and C on the use of the Revised IEIRD (BC Form 236).

Standard 3.15

Copies of the Goods declaration

P	The Customs shall require the lodgement of the original Goods declaration and only
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	the minimum number of copies necessary.
N	Legislation spells out number of copies.

b. Documents Supporting the Goods declaration

Standard 3.16

Supporting documents

P	In support of the Goods declaration the Customs shall require only those documents necessary to permit control of the operation and to ensure that all requirements relating to the application of Customs law have been complied with.
N	The required supporting documents are specified in the legislation.

Standard 3.17

Subsequent presentation of supporting documents

P	Where certain supporting documents cannot be lodged with the Goods declaration for reasons deemed valid by the Customs, they shall allow production of those documents within a specified period.
N	Code allows posting of bond for presentation of invoice and other supporting documents.

Transitional Standard 3.18

Lodgement of supporting documents by electronic means

P	The Customs shall permit the lodgement of supporting documents by electronic means.
N	E-commerce law allows this and ASYCUDA and TWM support submission of scanned documents.

Transitional Standard 3.21

Electronic Goods declaration

P	The Customs shall permit the lodging of the Goods declaration by electronic means.
N	Mandatory under the Electronic Commerce Act.

Standard 3.22

P	The Goods declaration shall be lodged during the hours designated by the Customs.
N	<ul style="list-style-type: none"> • Civil Service Rules provides for the working hours of government offices as 8:00 AM to 5 PM. • Heads of offices are authorized to institute staggered office hours to provide longer service to the public. • At present, lodgment for most goods declaration is at entry encoding centers and during office hours. Only a handful of goods declarations are done electronically

	and outside the regular office hours.
	<ul style="list-style-type: none"> • Upon implementation of the web based customs system, lodgment will be 24x7.

Standard 3.23

P	Where national legislation lays down a time limit for lodging the Goods declaration, the time allowed shall be sufficient to enable the declarant to complete the Goods declaration and to obtain the supporting documents required.
N	Section 1801 of the TCCP provides a time limit of 30 days from the date of discharge of the last package from the vessel or aircraft. This is more than sufficient time.

Standard 3.26

P	When the Customs cannot register the Goods declaration, they shall state the reasons to the declarant.
N	The current as well as the incoming ICT System satisfies this standard. Should there be lacking information, the system cannot proceed to register the declaration and error notification is provided.

Standard 3.27

Amendment of a Goods declaration

P	The Customs shall permit the declarant to amend the Goods declaration that has already been lodged, provided that when the request is received they have not begun to check the Goods declaration or to examine the goods.
N	Current legislation allows this. The ICT system however entails cancellation by the assigned Customs officer of the original declaration and the lodgement of a new one.

Standard 3.30

Time of checking the Goods declaration

P	Checking the Goods declaration shall be effected at the same time or as soon as possible after the Goods declaration is registered.
N	Since there is in operation an automated system, the electronic declaration is immediately checked. For greenlane shipments, checking is completed 100%. However there is the intervention of Commodity Specialist Checks on greenlane entries after payment long after registration prior to delivery of the goods which contravenes this standard.

Standard 3.31

Checking the Goods declaration

P	For the purpose of checking the Goods declaration, the Customs shall take only such action as they deem essential to ensure compliance with Customs law.
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Examination of the goods

a. Time required for examination of goods

Standard 3.33

P	When the Customs decide that goods declared shall be examined, this examination shall take place as soon as possible after the Goods declaration has been registered.
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Standard 3.34

Examination of live animals, perishable goods and other urgent consignments

P	When scheduling examinations, priority shall be given to the examination of live animals and perishable goods and to other goods which the Customs accept are urgently required.
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c. Sampling by the Customs

Standard 3.38

P	Samples shall be taken only where deemed necessary by the Customs to establish the tariff description and/or value of goods declared or to ensure the application of other provisions of national legislation. Samples drawn shall be as small as possible.
C	There is CMO 7-1990 - Guidelines for Taking Sample and other instructions on this but needs reiteration in the proposed examination manual.

Errors

Standard 3.39

P	The Customs shall not impose substantial penalties for errors where they are satisfied that such error is inadvertent and that there has been no fraudulent intent or gross negligence. Where they consider it necessary to discourage a repetition of such errors, a penalty may be imposed but shall be no greater than is necessary for this purpose.
N	<p>Section 2503 of the TCCP recognizes levels of undervaluation, misclassification and misdeclaration that are mere errors or not constituting fraud and provides for a range of surcharge. However, there is no guideline on how the exact point in the range of surcharge (1x-2x additional duty payable) will have to be set.</p> <p>CAO 10-93 Part III and CMO 64-93 list the situation when surcharge may not be imposed.</p> <p>Strategy: while it may be said that GRP is compliant on this standard, there is still a need to issue legislation to improve the quality of compliance. The regulation should include treatment of the specific errors listed in the Guidelines to the standard as follows:</p> <p>Inadvertent errors in the declared value of goods can occur as:</p>

	<ul style="list-style-type: none"> • errors in transcription; • arithmetical mistakes in declarations or supporting documents; • inadvertent omissions of elements of the dutiable value, such as inland freight abroad; • inadvertent errors in the conversion of foreign currency; or • incorrect deductions, such as discounts, the inadmissibility of which is not within the knowledge of the importer, and similar errors arising from misunderstanding of the principles laid down in the legal provisions relating to valuation for Customs purposes.
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Release of goods

Standard 3.40

Release of the goods as soon as possible

P	<p>Goods declared shall be released as soon as the Customs have examined them or decided not to examine them, provided that:</p> <ul style="list-style-type: none"> • no offence has been found; • the import or export license or any other documents required have been acquired; • all permits relating to the procedure concerned have been acquired; and • any duties and taxes have been paid or that appropriate action has been taken to ensure their collection.
N	Both current and incoming ICT provide for the automated release of the goods upon meeting the above conditions

Standard 3.42

Release of the goods before the results of an examination

P	When the Customs decide that they require laboratory analysis of samples, detailed technical documents or expert advice, they shall release the goods before the results of such examination are known, provided that any security required has been furnished and provided they are satisfied that the goods are not subject to prohibitions or restrictions.
N	Maybe availed of pursuant to Sec 1602 on tentative liquidation. Nonetheless, clearer regulations must be issued to fully achieve the benefit of this RKC standard.

Standard 3.43

Release of goods when an offence has occurred

P	When an offence has been detected, the Customs shall not wait for the completion of administrative or legal action before they release the goods, provided that the goods are not liable to confiscation or forfeiture or to be needed as evidence at some later stage and that the declarant pays the duties and taxes and furnishes security to ensure collection of any additional duties and taxes and of any penalties which may be imposed.
N	There is release under bond, redemption and other legal remedies.

Abandonment or destruction of goods

Standard 3.44

Repayment or remission of duties and taxes

P	<p>When goods have not yet been released for home use or when they have been placed under another Customs procedure, and provided that no offence has been detected, the person concerned shall not be required to pay the duties and taxes or shall be entitled to repayment thereof:</p> <ul style="list-style-type: none">• When, at his request, such goods are abandoned to the Revenue or destroyed or rendered commercially valueless under Customs control, as the Customs may decide.• Any costs involved shall be borne by the person concerned;• When such goods are destroyed or irrecoverably lost by accident or force majeure, provided that such destruction or loss is duly established to the satisfaction of the Customs;• On shortages due to the nature of the goods when such shortages are duly established to the satisfaction of the Customs.• Any waste or scrap remaining after destruction shall be liable, if taken into home use or exported, to the duties and taxes that would be applicable to such waste or scrap imported or exported in that state.
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Transitional Standard 3.45

Proceeds of sale by Customs

P	<p>When the Customs sell goods which have not been declared within the time allowed or could not be released although no offence has been discovered, the proceeds of the sale, after deduction of any duties and taxes and all other charges and expenses incurred, shall be made over to those persons entitled to receive them or, when this is not possible, held at their disposal for a specified period.</p>
N	<p>Sec 2605 of TCCP on Disposition of Proceeds.</p>

Chapter 4: Duties and Taxes

A. Assessment, Collection and Payment of Duties and Taxes

Standard 4.1

P	<p>National legislation shall define the circumstances when liability to duties and taxes is incurred.</p>
N	<p>Section 100, 1901-1907, 2001-04, of the TCCP, Section 107 of the NIRC, RA 7227, RA 7916 Check out Tariff Book.</p>

Standard 4.2

P	<p>The time period within which the applicable duties and taxes are assessed shall be stipulated in national legislation. The assessment shall follow as soon as possible after the Goods declaration is lodged or the liability is otherwise incurred.</p>
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N	IT system undertakes assessment right after filing and registration of entry. The assessment is immediately communicated to the bank.
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Standard 4.3

P	The factors on which the assessment of duties and taxes is based and the conditions under which they are determined shall be specified in national legislation.
N	The Tariff Book clearly spells these out.

Standard 4.4

P	The rates of duties and taxes shall be set out in official publications.
N	All legislation requires publication to have force and effect.

Standard 4.5

P	National legislation shall specify the point in time to be taken into consideration for the purpose of determining the rates of duties and taxes.
N	Date of registration of entry is determinant. However if rate changes after registration and before release, the revised rate governs.

Standard 4.6

Payment

P	National legislation shall specify the methods that may be used to pay the duties and taxes.
N	CAO on Payments clearly define method of payments. New payment system with BAP likewise.

Standard 4.7

P	National legislation shall specify the person(s) responsible for the payment of duties and taxes
N	Section 1204 of the TCCP makes it the liability of importer.

Standard 4.8

P	National legislation shall determine the due date and the place where payment is to be made.
N	CAO requires payments should be made to the banks and currently before lodgement with Customs.

Standard 4.11

P	National legislation shall determine the rate of interest chargeable on amounts of duties and taxes that have not been paid by the due date and the conditions of application of such interest.
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Standard 4.12

P	When the duties and taxes have been paid, a receipt constituting proof of payment shall be issued to the payer, unless there is other evidence constituting proof of payment.
N	Banks issue Official Receipt.

Transitional Standard 4.13

P	National legislation shall specify a minimum value and/or a minimum amount of duties and taxes below which no duties and taxes will be collected.
N	Section 709 and 1604 of the TCCP.

Standard 4.14

P	If the Customs find that errors in the Goods declaration or in the assessment of the duties and taxes will cause or have caused the collection or recovery of an amount of duties and taxes less than that legally chargeable, they shall correct the errors and collect the amount underpaid. However, if the amount involved is less than the minimum amount specified in national legislation, the Customs shall not collect or recover that amount.
N	Section 604 and 1707 of the TCCP or collection shall be made.

B. Deferred Payment of Duties and Taxes**Standard 4.15**

P	Where national legislation provides for the deferred payment of duties and taxes, it shall specify the conditions under which such facility is allowed.
N	No deferred payment in National legislation.

Standard 4.16

P	Deferred payment shall be allowed without interest charges to the extent possible.
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Standard 4.17

P	The period for deferred payment of duties and taxes shall be at least fourteen days.
N	A form of deferred payment available to government imports is the Special Allotment Release Order or SARO but even this facility is strictly release upon posting of a guarantee by the government office concerned that they commit to work out with the Department of Budget and Management to obtain the SARO that would credit the collection of Customs. For the importations of the private sector, there is no release on deferred payment facility nor would it be conceivable for government to legislate such.

C. Repayment of Duties and Taxes

Standard 4.18

P	Repayment shall be granted where it is established that duties and taxes have been overcharged as a result of an error in their assessment.
N	Section 1707 of the TCCP.

Standard 4.23

P	Where time limits are fixed beyond which claims for repayment will not be accepted, such limits shall be of sufficient duration to take account of the differing circumstances pertaining to each type of case in which repayment may be granted.
N	Section 1707 of the TCCP "...if discovered within one year after the final liquidation..."

Standard 4.24

P	Repayment shall not be granted if the amount involved is less than the minimum amount specified in national legislation
N	Sec 1604 of the TCCP provides that "in case of overpayment or underpayment... where the amount involved is less than P10, no refund.

Chapter 5: Security

Standard 5.1

P	National legislation shall enumerate the cases in which security is required and shall specify the forms in which security is to be provided.
N	The Customs Code itself enumerates the cases (warehousing, tentative liquidation, conditionally free imports, release pending seizure proceedings and others) when security is required, the form(s) of security acceptable.

Standard 5.2

P	The Customs shall determine the amount of security.
G	Customs must set out clear instructions on how the amount of security is to be calculated. In cases where national legislation specifies that the security is compulsory, the Customs can fix the amount at a level equal to: <ul style="list-style-type: none">• the precise amount of the duties and taxes due to Customs, where it can be established with certainty at the time the security is required;• any other amount specified in national legislation; or• the maximum amount, as estimated by Customs, of the obligations which have been or may be incurred.
N	Legislation already clearly defines how the amount of the security must be defined

Standard 5.3

P	Any person required to provide security shall be allowed to choose any form of security provided that it is acceptable to the Customs.
N	In warehousing, persons are given a choice between domestic letter of credit, bank guarantee or bond albeit in actual practice, persons always select the cheapest which is the warehousing bond. In tentative liquidation pending value dispute settlement (CMO 37-2001), the policy is to limit the choices to cash, managers check and bank guaranty with the acceptance of surety bond and other forms of security left to the determination of the Collector. In several subparagraphs of Section 105, letter guarantee is an additional choice to a surety bond but as with the other situations requiring security, the decision is made by customs although persons may request for the form. In other situations, only one form of security is provided. Thus where national legislation provides for several forms of security, persons are free to make a choice but final decision remains with Customs.

Standard 5.4

P	Where national legislation provides, the Customs shall not require security when they are satisfied that an obligation to the Customs will be fulfilled.
N	Legislation provides flexibility to Customs to accept letter guarantee in-lieu of bonds for cases where it is not practical and proper to require a commercial security like for an aircraft that will be demonstrated in the country and the importer is a foreign government.

Standard 5.5

P	When security is required to ensure that the obligations arising from a Customs procedure will be fulfilled, the Customs shall accept a general security, in particular from declarants who regularly declare goods at different offices in the Customs territory.
N	<ul style="list-style-type: none"> • Warehousing Bonds are Chargeable Bonds • Transshipment Bonds are General Bonds not Transactions

Chapter 6: Customs Control

Standard 6.1

P	All goods, including means of transport, which enter or leave the Customs territory, regardless of whether they are liable to duties and taxes, shall be subject to Customs control.
N	TCCP provides that entry and exist of goods and people into and out of the Customs territory is subject to Customs control.

Standard 6.2

P	Customs control shall be limited to that necessary to ensure compliance with the Customs law.
N	TCCP allows selective examination, multi-channel processing etc.

Standard 6.3

P	In the application of Customs control, the Customs shall use risk management
N	Revised Code on selective exam. Selectivity allowed. However, there should be a top commission to set risk management doctrine and levels of examination.

Standard 6.4

P	The Customs shall use risk analysis to determine which persons and which goods, including means of transport, should be examined and the extent of the examination.
N	same

Standard 6.6

P	Customs control systems shall include audit-based controls.
N	There are regulations issued but not implemented and consequently results not feeding into risk management and selectivity system.

Transitional Standard 6.9

P	The Customs shall use information technology and electronic commerce to the greatest possible extent to enhance Customs control.
N	E-Commerce Act

Chapter 8: Relationship between the Customs and Third Parties

G	National Legislation is compliant to all these standards which covers the dealings of Customs with duly accredited Third Parties. The issue that needs resolution is Who can act as Third Parties or Standard 3.7 since national legislation effectively curtailed the rights of persons to be declarant and deal directly with Customs.
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Standard 8.2

P	National legislation shall set out the conditions under which a person may act for and on behalf of another person in dealing with the Customs and shall lay down the liability of third parties to the Customs for duties and taxes and for any irregularities.
N	<p>The first CAO issued implementing RA 9280 recognized only one third party the Customs broker. An amendatory CAO was shortly issued allowing forwarders and brokerage companies to undertake brokering for as long as the signing of the documents is left to a duly accredited professional customs broker.</p> <ul style="list-style-type: none"> • The act and the implementing regulations clearly define the accreditation procedure for the practice the Customs brokerage profession (or to be a customs broker). Section 1301 of the TCCP also provides “that were the entry be filed by a party other than the importer, said importer shall himself be required to declare under oath and under the penalties of falsification or perjury that the declarations and statements contained in the entry are true and correct.” • Penalties or sanctions on customs brokers for violations of laws, rules and regulations are clearly defined. Thus Phil national legislation maybe

	considered as compliant on this standard.
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Standard 8.6

P	The Customs shall specify the circumstances under which they are not prepared to transact business with a third party.
N	No 1 of Part V of CAO3-2006A deals with the grounds for the suspension or revocation of accreditation.

Standard 8.7

P	The Customs shall give written notification to the third party of a decision not to transact business.
N	No 13 of Part V of CAO provides for Order of Suspension or Revocation of Accreditation.

General Annex Gap Analysis: Non-Compliant Provisions

- **General Annex Gap Analysis: Non-Compliant Provisions: LEGEND**
 - **Chapter 3: Clearance and Other Customs Formalities**
 - **The declarant**
 - a. Persons entitled to act as declarant
 - Standard 3.7
 - c. Rights of the declarant
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 - **The Goods declaration**
 - b. Documents supporting the Goods declaration
 - Standard 3.19
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 - **Special procedures for authorized persons**
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 - Special Procedure 1
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 - a. Time required for examination of goods
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 - **Chapter 4: Duties and Taxes**
 - **A. Assessment, Collection and Payment of Duties and Taxes**
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 - **Chapter 5: Security**
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 - Standard 6.5
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 - **Chapter 7: Application of Information Technology**
 - Standard 7.1
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- **Chapter 8: Relationship between the Customs and Third Parties**
 - Standard 8.1
 - Standard 8.3
 - Standard 8.4
 - Standard 8.5
- **Chapter 9: Information, Decisions and Rulings Supplied by the Customs**
 - **A. Information of General Application**
 - Standard 9.1
 - Standard 9.2
 - Transitional Standard 9.3

Effecting Amendment to the Import SAD in the ICT: Present vs. New Systems

General Annex Gap Analysis: Non-Compliant Provisions

LEGEND:	
P	Provision of RKC
G	RKC Guidelines
N	Notes on Compliance
C	Compliance Gap
1	Not allowed under current legislation
1a	Code and Laws are inconsistent
1b	Orders and Circulars are inconsistent
2	Allowed under certain conditions not those contemplated under RKC
3	Legislation is Silent
4	Manageable under Asycuda or TWM
5	Not manageable under Asycuda or TWM
S	Strategies for Compliance
1	Amendment Law or Pass New Law
2	Issue Department Order or a CAO to amend existing ones
3	Develop implementing System and/or reflect in the manual of operations which must be issued as a regulation
4	Particularly highlight in the proposed executive order on the general announcement of RKC accession to clearly demonstrate compliance

Chapter 3: Clearance and Other Customs Formalities

The declarant

a. Persons entitled to act as declarant

Standard 3.7

- Who can be a declarant

P	Any person having the right to dispose of the goods shall be entitled to act as declarant.
N	While Sec 1301 did not put a limit to the right of “persons having the right to dispose of the goods” to be the declarant nor was this recognition amended under RA 9280, the Board of Customs Brokers issued Resolution No. 03 Series 2005 (Rules and Regulations Implementing the Provisions of RA 9280) where Section 27 thereof provides “Import and Export entry declarations shall be signed only by a customs broker under oath based on the covering documents submitted...”

	The implementing regulations therefore, in not allowing corporations from making and filing goods declarations themselves and requiring brokers directly or brokerage/ forwarding companies with signing brokers are not compliant and is in fact contrary to this RKC Standard.
C-1	
S-1	Work for the further amendment of implementing regulations to fully become compliant with the RKC. After all, the Customs law itself (PD 1464) is fully in compliant (RA 9280) while the Customs Broker's Act never revoked this recognition.

c. Rights of the declarant

Standard 3.9 - Drawing samples

P	Before lodging the Goods declaration the declarant shall be allowed, under such conditions as may be laid down by the Customs: a. To inspect the goods; and b. To draw samples.
N	Compliance should be no problem even if legislation is silent since Collectors of Customs have been allowing these.
C-3	
S-3	

The Goods declaration

b. Documents supporting the Goods declaration

Standard 3.19 – Translation of supporting documents

P	The Customs shall not require a translation of the particulars of supporting documents except when necessary to permit processing of the Goods declaration.
G	The layout of many supporting documents will meet international standards, so the information contained in them may be easily understood. Standard 3.19 requires that Customs should not routinely demand translation of supporting documents presented in another language when processing the Goods declaration. It should only be necessary where the information is ambiguous or not easily accessible.
C-1	Sec 3517 of TCCP provides that “...document in a foreign country must be accompanied with a translation in the official language of this country.”
S-1	Since this is a general annex standard, the TCCP must be amended not to make the translation mandatory, i.e., provide an exemption when the document conforms to international standards for those documents such that the data contained therein can be understood without the need for translation

Standard 3.20 – Lodgement at a designated Customs office

P	The Customs shall permit the lodging of the Goods declaration at any designated Customs office.
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N	<p>In actuality and realistically at present, lodgment can only be at Customhouse which has the shipping manifest for manifest clearance and where the goods are located so examination can be effected.</p> <p>With the new IT system under development, however, a central database of manifest will be generated so entries can be manifested no matter where they may have been filed. The new IT system even provides for the scanning of the supporting documents including those needed for the examination of the goods so these maybe made available from any customs office. Thus, a declarant can file goods declaration from anywhere and obtain service from the particular customs office designated by the business rules to process it and issue the clearance. For the most part the declarant will be dealing with a virtual customs office and should therefore be indifferent. Nonetheless, there may be situations as in yellow lane processing where for the convenience of the declarant, the document required maybe presented to a nearest customs offices which must then forward the same to the needing office by secured means.</p>
C-3,4	Code is silent.
S-3	Allow submission of required documents in case of yellow lane shipments at customshouse most convenient to declarant.

Standard 3.24

P	At the request of the declarant and for reasons deemed valid by the Customs, the latter shall extend the time limit prescribed for lodging the Goods declaration.
N	The 30 days period as well as the 15 days to claim from the date of posting of the notice to claim are not extendible.
C-1	
S-1	

Standard 3.25

P	National legislation shall make provision for the lodging and registering or checking of the Goods declaration and supporting documents prior to the arrival of the goods.
N	<ul style="list-style-type: none"> • There is nothing in the TCCP which prohibits pre-goods arrival lodging and checking of the goods declaration. • However, current regulations do not support this procedure: <ul style="list-style-type: none"> ○ the first step under existing procedure requires that the cargo manifest must have already been submitted so that important details like weight, measurement, marks and numbers can be compared with those in the entry ○ one of the determinants of the applicable rate of duty is the one prevailing at the time of goods arrival ○ the determinant of the applicable exchange rate is the time of registration of the carrying vessel <p>The above notwithstanding, regulations may be amended to allow this procedure. The challenge is in developing an extension to the customs application to provide for the differential processing of advance goods declarations.</p>
C-3	
S-1	

Transitional Standard 3.28 – Amendment of a Goods declaration

P	The Customs shall permit the declarant to amend the Goods declaration if a request is received after checking of the Goods declaration has commenced, if the reasons given by the declarant are deemed valid by the Customs.
N	Checking of the goods declaration may lead to a number of results. If the result is that there is over payment as when in the case of short landed shipments, amendment of the declaration may be allowed. When additional duties and taxes are found and the level of discrepancy does not warrant seizure of the goods, amendment may similarly be allowable. But when the level of the discrepancy warrants seizure, goods declaration can no longer be amended.
C-3,4	Legislation is silent on request for amendment of goods declaration although both current and future computer systems can handle this procedure. (Appendix 1).
S	Issuance of legislation clearly defining when amendments may be allowed and the procedure for introducing such amendment in the ICT.

Transitional Standard 3.29 – Withdrawal of Goods Declaration

P	The declarant shall be allowed to withdraw the Goods declaration and apply for another Customs procedure, provided that the request to do so is made to the Customs before the goods have been released and that the reasons are deemed valid by the Customs.
C-2	
S-3	Issuance of legislation clearly defining when amendments may be allowed and the procedure for introducing such amendment in the ICT.

Standard 3.31 – Checking the Goods declaration

P	For the purpose of checking the Goods declaration, the Customs shall take only such action as they deem essential to ensure compliance with Customs law.
G	<p>Standard 3.31 states that Customs as a general rule, Customs will verify the following:</p> <ul style="list-style-type: none"> • That the tariff classification in the Goods declaration corresponds to the description of the goods; • That the rates of duties and taxes indicated are those in force; • That the particulars in the Goods declaration correspond with those in the supporting documents submitted, especially in regard to the quantity, value and country of origin of the goods; • The authenticity and validity of the supporting documents; and • That the Customs procedure requested is appropriate. • In an electronic environment, the specifications for checking of the Goods declaration should be integrated in the automated clearance system. • Customs should only require the declarant to present additional information or documents when necessary to verify the accuracy of the particulars contained in the Goods declaration or supporting documents. • Checking the Goods declaration may prompt Customs to take a sample or examine the goods in order to verify the particulars in the declaration.

N	<p>In theory the actions required are fully integrated into the automated system and where the clearance channel is yellow or red, the documentary requirements and the actions of officers are well defined under existing regulations. In practice, with the levels of selections mostly red with very little green, this RKC standard is not being accomplished.</p> <p>Previous administrations have set the level of selections to not more than 20% to be progressively pared down to at most 5%.</p> <p>A number of CMOs have been issued mandating actions which are aligned to this RKC standard: CMOs 10-92, 104-92, 8-93, 4-94, 15-96 and 37-97 among others.</p>
C-3	
S-3	The level of selections must be risk based and must take into account the capability and conditions of the port to support. A trade and transport facilitation group must peg the levels of selections to realistic levels.

Special procedures for authorized persons

Transitional Standard 3.32 – Authorized Persons and Special Procedures

P	For authorized persons who meet criteria specified by the Customs, including having an appropriate record of compliance with Customs requirements and a satisfactory system for managing their commercial records, the Customs shall provide for special procedures
G	It is a requirement that at least two of the five special procedures of this Transitory Standard be introduced by Customs administrations and that other special procedures are considered for possible implementation.
N	The special procedures described in this standard for entities with good track record are not part of current legislation. The special procedures implemented by Philippine Customs in the past are not the kind envisioned in this standard.

Special Procedure 1

P	Release of goods on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final Goods declaration.
G	<p>Information required on the initial declaration should be limited to that necessary to determine the admissibility of the goods and normally includes the description, quantity and value of the goods.</p> <p>In some administrations, the information in the initial declaration can simply comprise the declarant's authorization number and a commercially recognized description of the goods or the commercial reference to the goods in the authorized person's records. With this reference to the authorized person's records it is possible for Customs to have access to all the information necessary. Some administrations also allow a commercial or official document to be the initial declaration.</p>
N	Allowed case to case basis by a customs collector under a procedure called Special Permit to Transfer when it is not practical to keep the goods nor examine the shipment in port. But this procedure does not release but rather only transfers consignments under continuous guard
C-1,4	May be managed better under the First Import Procedure (FIP) of Asycuda.

Special Procedure 2

P	Clearance of the goods at the declarant's premises or another place authorized by the Customs;
N	Allowed case to case by collector when it is not practical to store nor examine the goods in port. The procedure is not for authorized persons as defined under the standard but given to anyone when the circumstances of the shipment warrants doing so.
C-2,4	
S	<p>Compliance with Special Procedures 1 and 2 should be sufficient for purposes of accession to RKC.</p> <p>Compliance with Special Procedures 1 and 2 is feasible in the short term since historically, BOC has been allowing release under minimum of information and examination away from the customs station on a case to case basis under the Special Permit to Transfer or SPT. What's needed is to expand SPT so it can be availed of by "authorized persons" for most if not all its consignments and not only when the nature of the shipment or the conditions of the port warrants it.</p> <p>Also needed are clear criteria for qualification as authorized person and an expedient system for availing of these special procedures.</p> <p>The document and procedure FIP of Trade World Manager should be considered as the means for implementing these special procedures.</p>

Special Procedures 3

P	Allowing a single Goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person
N	<p>Current memorandum orders on the form and procedure for filing goods declarations do not allow periodic filings. In general, one goods declaration is required per bill of lading.</p> <p>The TCCP also required imports to be entered within a non-extendable period of 30 days from the discharge of the last package from the vessel putting a limit to the period if ever compliance with this standard is desired.</p> <p>Old and New ICT systems will also not be able to respond because of the one entry to one bill of lading manifesting system. Implementing this standard to all imports may also be prejudicial to the revenue program.</p> <p>Use of e-commerce and automation in the shipment by shipment goods declaration, will put the process nearly at par with a simplified release procedure coupled with periodic goods declaration envisioned in this RKC standard.</p> <p>However, periodic export declaration is already being allowed for some export commodities like Bananas. Legislation can be amended to allow this procedure when national competitiveness requires.</p>
C-2,4	
S	Compliance with the following three (3) other special procedures should be pursued when the need and readiness of trade for these procedures come. As of this time,

	implementation of these special procedures is not crucial even as it is not also necessary for the Philippine accession to the RKC.
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Special Procedures 4

P	Use of the authorized persons' commercial records to self-assess their duty and tax liability and, where appropriate, to ensure compliance with other Customs requirements
G	<p>Trader himself determines the duties and taxes due based on his own relevant system and commercial records which meet Customs criteria for authorization to use special procedures.</p> <p>Goods released at importation immediately upon their arrival in the Customs territory. Once the physical movement of the goods has taken place, a declaration should be furnished by the authorized person or their representative normally the amount of duties and taxes that will be due.</p> <p>Other information may be required in the declaration, such as value and origin, but it should be kept to a minimum. Some administrations require a supplementary declaration which may not be required for a month or more after the release of the goods.</p>
N	Making a declaration based on the importer's own system and moving this seamlessly into the customs declaration system is the ideal setup and must therefore be encouraged and supported.
C-3	
S	<p>Customs must set standards for ICT systems that may qualify the importer or exporter to self-assess based on the system.</p> <p>Accredited VASPs must be directed to have the capability for organizing an authorized person's systems to operate with customs on this basis</p> <p>This procedure maybe implemented separate from the immediate release and periodic declaration standards</p>

Special Procedures 5

P	Allowing the lodgement of the Goods declaration by means of an entry in the records of the authorized person to be supported subsequently by a supplementary Goods declaration.
G	Where release or clearance is allowed at approved premises, Goods declaration may simply be an entry in the authorized person's commercial records. Customs must be satisfied that the applicant's records will enable them to carry out effective checks, particularly retrospective audits. Entry in the records consists of specific information concerning the goods such as the shipper, consignee, quantity, value and country of origin, the date of release of those goods and any other information which may be required by Customs for the application of the Customs procedure concerned.
N	
C-1	
S	Private Sector must first undertake a survey on the need and readiness of trade for this special procedure.

Examination of the goods

a. Time required for examination of goods

Standard 3.35 – Inspection of goods by other competent authorities

P	If the goods must be inspected by other competent authorities and the Customs also schedules an examination, the Customs shall ensure that the inspections are coordinated and, if possible, carried out at the same time.
C-3,4	Can be flagged in the IT system (as to requiring the presence of other competent authorities) but no specific legislation mandating these standards.
S	<p>Issue a General Manual for Customs Examination base of these RKC standards and of the principles below:</p> <ul style="list-style-type: none"> • Integrated interventions of competent authorities with respective mandates over the cross border flow of goods • Examination based on risk assessment and taking into account the capacity and conditions of the port <p>Enter into MOA with competent authorities for a single point of control or a designated examination area where all concerned authorities can hold office with immediate availability of their experts and that would provide 24x7 services particularly for perishable and sensitive goods</p> <p>Provide ICT system with database of interventions needed by HS Code and automated procedure for notifying agencies concerned of presence of shipments and goods declarations needing interventions.</p> <p>Make as part of the responsibilities of the assigned examiner to arrange for the presence of other competent authorities in the examination.</p>

b. Presence of the declarant at examination of goods

Standard 3.36 – Presence of the declarant at the examination of the goods

P	The Customs shall consider requests by the declarant to be present or to be represented at the examination of the goods. Such requests shall be granted unless exceptional circumstances exist.
C-3	While legislation is silent, compliance on this standard will not be difficult. In reality, opening of shipments for examination is only allowed by the port operator when the importer or his representative makes the request or when customs directs it.

Standard 3.37

P	If the Customs deem it useful, they shall require the declarant to be present or to be represented at the examination of the goods to give them any assistance necessary to facilitate the examination.
S	For Standards 36 and 37, the above operations manual described in Standard 35 must also provide as a general rule for goods examination without the presence of the declarant. However, the presence of the declarant maybe allowed upon request for valid reasons or when requires presence to facilitate the examination of the goods

	Customs and Port operator systems must be interfaced such that when the declaration is selected for examination, the operator will be instructed to have the shipment transferred to the single control point or DEA for the examination to take place at once.
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Release of goods

Standard 3.41 – Prior permission for release of the goods

P	If the Customs are satisfied that the declarant will subsequently accomplish all the formalities in respect of clearance they shall release the goods, provided that the declarant produces a commercial or official document giving the main particulars of the consignment concerned and acceptable to the Customs, and that security, where required, has been furnished to ensure collection of any applicable duties and taxes.
G	This standard does not require a Goods declaration at all, even an incomplete one. Release can be effected herein based on a commercial document such as an invoice, a purchase order, bill of lading or similar document that would be specified by Customs. If the goods are subject to certain veterinary or health requirement, these are required to be complied as well. A security for the duties and taxes is even optional.
N	While this is a good facilitation measure particularly for urgent air shipments, Collectors of Customs who are permitting this on a case to case basis are putting themselves at risk since there are no regulations specifically allowing this. Current regulations require that all releases be authorized on the appropriate customs form. Also, Sec 1502 provides that no collector shall deliver imported articles without surrender of the bill of lading except on written order of the carrier or agent. Standard 3.13 which is observed requires a Goods declaration which may be an incomplete or a provisional one.
C-1	
S	To be in compliance, regulations must be issued. Formalization and Expansion of the terminal and ramp releases for certain types of cargo should be explored as a way of immediately complying.

Chapter 4: Duties and Taxes

A. Assessment, Collection and Payment of Duties and Taxes

Standard 4.10

P	National legislation shall specify the period within which the Customs may take legal action to collect duties and taxes not paid by the due date.
N	The phrase "... period within which the Customs may take legal action..." may mean (1) action may only be taken within the period or (2) action may only commence at the start of the period. Verification with the WCO favored the first one or the prescriptive interpretation. To comply with this standard, a law on prescription or debt write-off period must be passed. This will remedy the current difficulty of customs with billions in pesos in its books of accounts that have no more chance of being collected. This bottomless garbage can only create inefficiencies in other customs operations including

	facilitating trade.
C-1	
S	Pass a law allowing customs to write off debts or payables after the lapse of a number of years as for example 3 years from the date the accountability becomes due.

C. Repayment of Duties and Taxes

Standard 4.19

P	<p>Repayment shall be granted in respect of imported or exported goods which are found to have been defective or otherwise not in accordance with the agreed specifications at the time of importation or exportation and are returned either to the supplier or to another person designated by the supplier, subject to the following conditions:</p> <ul style="list-style-type: none"> • The goods have not been worked, repaired or used in the country of importation, and are re-exported within a reasonable time; • The goods have not been worked, repaired or used in the country to which they were exported, and are re-imported within a reasonable time. • Use of the goods shall, however, not hinder the repayment if such use was indispensable to discover the defects or other circumstances which caused the re-exportation or re-importation of the goods. <p>As an alternative to re-exportation or re-importation, the goods may be abandoned to the Revenue or destroyed or rendered commercially valueless under Customs control, as the Customs may decide.</p> <p>Such abandonment or destruction shall not entail any cost to the Revenue.</p>
C-1	<p>Not among those situations allowed under the Abatement and Refund Provisions of Customs nor Tax Code.</p> <p>However importer can re-export as zero rated and then get a tax credit</p>
S	<p>Since this situation should likewise be considered for abatement or refund, both the Customs and Tax Codes must be amended.</p>

Transitional Standard 4.20

P	<p>Where permission is given by the Customs for goods originally declared for a Customs procedure with payment of duties and taxes to be placed under another Customs procedure, repayment shall be made of any duties and taxes charged in excess of the amount due under the new procedure.</p>
N	<p>The situation contemplated in this transitory standard is not among those specifically enumerated as allowable for refund. The situation depicted is however meritorious for refund which must be made clear in the national legislation.</p> <p>The new ICT (TWM + Asycuda) can handle withdrawal of original entry with corresponding rectification of databases and filing of new declaration following the new procedure even after the goods have been released from customs control. The system can provide support to the refund process.</p>
C-3	
S	<p>What is needed is an order that defines conditions for allowing conversion to new</p>

	procedure and how this will be managed under the ICT system.
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Standard 4.21

P	Decisions on claims for repayment shall be reached, and notified in writing to the persons concerned, without undue delay, and repayment of amounts overcharged shall be made as soon as possible after the verification of claims.
C-3	
S	Same as above

Standard 4.22

P	Where it is established by the Customs that the overcharge is a result of an error on the part of the Customs in assessing the duties and taxes, repayment shall be made as a matter of priority.
C-3	
S	Same as above

Chapter 5: Security

Standard 5.6

P	Where security is required, the amount of security to be provided shall be as low as possible and, in respect of the payment of duties and taxes, shall not exceed the amount potentially chargeable.
N	While the face value of the security is at least 100% of the amount potentially chargeable and in the case of some re-export bonds is 150%, the cost of the security is low mostly less than 1% of the face value. Still, strictly speaking, there is no compliance with this RKC standard in those cases where the face value of the bond is in excess of 100%.
S	Amend the customs code to make the face value of the security not more than 100% of the liability. This will align our legislation to the ATA Carnet. To discourage breach of bond, surcharges must be provided.

Standard 5.7

P	Where security has been furnished, it shall be discharged as soon as possible after the Customs are satisfied that the obligations under which the security was required have been duly fulfilled.
N	Warehousing regulations provide that when part of the obligation has been discharged, and the remaining obligation only applies to part of the secured amount, a commensurate amount of the security may be released if requested by the person concerned, provided the amount of security is sufficient to justify this action There is no legislation saying that the security shall be quickly discharged. Actual cancellation takes very long because of policy to liquidate entry first before bonds cancellation, long time to account for compliance with bonded undertaking and inefficient liquidation system.

	Problem of large due and demandable bonds that should have been canceled remain.
C-3	
S	Automate bonds management as to make bonds cancellation automatic when the bonded undertaking shall have been discharged. Allow bonds cancellation ahead of liquidation of entry similar to partial bonds cancellation in case of warehousing

Chapter 6: Customs Control

Standard 6.5

P	The Customs shall adopt a compliance measurement strategy to support risk management.
G	Compliance measurement is a phrase used when statistically valid random sampling techniques are used to determine the degree to which traders, carriers, imported goods, etc conform to Customs rules and procedures. Customs gathers data from a variety of sources, both internal and external, and through both manual and automated means. With the data (import and export records), the tools (statistical analysis) and the methodology (systematic analysis of large traders or commodities), Customs can make reasonable, informed conclusions about the compliance rates of many entities.
N	There is no Compliance Measurement Strategy (CMS) in operation now at BOC nor is there an order or regulation providing for the use of this System.
C-3	
S	CMS must be developed and operated as part of the Risk Management and Selectivity Systems as well as of the Post Audit of BOC Technical Assistance must be sought for BOC in coordination with private sector group for the development and implementation of the CMS.

Standard 6.7

P	The Customs shall seek to co-operate with other Customs administrations and seek to conclude mutual administrative assistance agreements to enhance Customs control.
N	Philippine Customs has entered into several international agreements and is still pursuing similar initiatives. For example, the Philippines is leading the efforts on the Asean Single Window. But TCCP and national legislation is silent on this.
C-3	
S4	

Standard 6.8

P	The Customs shall seek to co-operate with the trade and seek to conclude Memoranda of Understanding to enhance Customs control.
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N	Customs already have several MOUs with trade the and business groups to enhance customs control and facilitate trade.
C-3	
S4	Direct not only Customs but all other Agencies with cross border responsibilities to observe this.

Standard 6.10

P	The Customs shall evaluate traders' commercial systems where those systems have an impact on Customs operations to ensure compliance with Customs requirements.
N	BOC does not have the capability to evaluate trader's commercial systems nor the legal basis for undertaking such and organizing its processing system to make use of such commercial systems
C-3	
S	Undertake survey to identify traders with commercial systems that can qualify for use in Customs Control procedures with or without interface with the customs systems and who are willing to submit their system to customs. Issue legislation defining an accreditation procedure for such commercial system, defining its use in the customs control and clearance process, defining the responsibilities of owners of such systems and providing benefits for the use of such systems.

Chapter 7: Application of Information Technology

For most of Chapter 7 standards, the TCCP as amended by the E-Commerce Act is silent, i.e., the standards although largely observed are not reflected in current legislation. Fortunately, observance of most of the internationally accepted ICT standards were considered in the design and development of both Asycuda and Trade World Manager which are the core systems of the Customs ICT. The proposed general strategy to clearly demonstrate compliance with Chapter 7 and at the same time insure the healthy development of ICT in Customs is to issue implementing guidelines to the E-Commerce Act directing the observance of the RKC-ICT standards such as consultation, cost effectiveness and use of technical standards.

Standard 7.1

P	The Customs shall apply information technology to support Customs operations, where it is cost-effective and efficient for the Customs and for the trade. The Customs shall specify the conditions for its application.
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Standard 7.2

P	When introducing computer applications, the Customs shall use relevant internationally accepted standards.
N	For the new system schedule for implementation this year, the message standard that the Customs System AsycudaWorld accepts is XML coming from the VASPs. The public itself initially will have to send XML e-documents to the VASPs. Subsequently, the VASPs will provide message translation engines to be able to accept e-documents in other internationally accepted data standards such as UN/EDIFACT, UN/CEFACT, ANSI X.12, XML, ebXML and RosettaNet

	<p>The communication protocol shall be TCP/IP which will allow internet access between the customs and its clients.</p> <p>Security and authentication procedures shall use public key infrastructure; a security method that has been accepted by the Philippine Supreme Court as evidence that an electronic transaction has been consummated.</p>
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Standard 7.3

P	The introduction of information technology shall be carried out in consultation with all relevant parties directly affected, to the greatest extent possible.
N	Customs has undertaken and is still undertaking a series of stakeholders meeting in the design, development and implementation of the eCustoms system. While certain sectors are not satisfied with the level of consultation, on the whole Customs and its providers consider it an imperative to consult.

Standard 7.4

P	<p>New or revised national legislation shall provide for:</p> <ul style="list-style-type: none"> • Electronic commerce methods as an alternative to paper-based documentary requirements; • Electronic as well as paper-based authentication methods; • The right of the Customs to retain information for their own use and, as appropriate, to exchange such information with other Customs administrations and all other legally approved parties by means of electronic commerce techniques.
N	<ul style="list-style-type: none"> • The E-Commerce law mandates Customs and all other government agencies to make their services available electronically. • Customs will mandate the use of their electronic systems. The authentication technology prescribed under the law is PKI (Public Key Infrastructure). • Customs declarations are public records, the information from which Customs can keep for itself and can provide others for as long as it will serve the national interest and prevent fraud and other offenses against Customs. • Under the ASEAN Single Electronic Window Project, the Customs Services of the member countries agreed to exchange information starting with the export declaration and certificates of origin. Agreement has been entered into on Dec 9, 2005 the Protocol to which defined the documents to be exchanged thru the single window. The Philippines and Thailand have piloted the system to make the exchange electronic.

Chapter 8: Relationship between the Customs and Third Parties

Standard 8.1

P	Persons concerned shall have the choice of transacting business with the Customs either directly or by designating a third party to act on their behalf.
C-1	CAO 3-2006-A which implemented RA 9280 made it mandatory for some importers and exporters to use Customs brokers instead of transacting directly themselves.

	Section 4.1 for example required importers and exporters engaged in the general import and export business of commercial nature to use the services of a Customs broker as against the RKC'S standard of giving choice to the importers "of transacting business with Customs either directly or by designating a third party to act on their behalf."
S	

Standard 8.3

P	The Customs transactions where the person concerned elects to do business on his own account shall not be treated less favorably or be subject to more stringent requirements than those Customs transactions which are handled for the person concerned by a third party.
C-3	
S	Amend CAO 3-2006A to include this.

Standard 8.4

P	A person designated as a third party shall have the same rights as the person who designated him in those matters related to transacting business with the Customs.
C-3	
S	Amend CAO 3-2006A to include this.

Standard 8.5

P	The Customs shall provide for third parties to participate in their formal consultations with the trade.
C-3	In practice, they are normally consulted.
S	Include this in a CAO dealing with the issuance of regulations requiring a consultation with stakeholders and affected groups.

Chapter 9: Information, Decisions and Rulings Supplied by the Customs

N	<p>For most of these standards, the Customs Code and other legislations are mostly silent.</p> <p>To force Customs and other concerned agencies to inform the public of all its issuances, publication in a newspaper of general circulation and furnishing the UP Law Center is a requirement else the issuance will have no force and effect.</p> <p>Every now and then, private sector initiatives following a business model to readily make available relevant information is allowed by Customs but these initiatives are not sustained.</p> <p>Notwithstanding this conscious effort to make relevant information "readily available to interested parties" and in general to observed these standards to the best of available resources, it remains contestable if actual level of observance is what is envisioned in the RKC.</p>
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S	<p>The manualization of Customs Policies and Operational Systems and Procedures and Regulations, the provision for their regular updating by a professional group must be and its availability together with the customs laws and relevant issuance both in customs website/portal/library must be a priority project</p> <p>The website/portal must be equipped with search engine to allow persons to extract information themselves. However, provision must be made for persons who are unable to get information electronically but in writing or by phone</p> <p>Customs must therefore be encouraged to set up a Customs Contact Center similar to the BIR Contact Center as a strategy to complying with the standards in this RKC Chapter</p> <p>Private sector initiatives for the creation, maintenance and dissemination of relevant information for a fee must be encouraged by Customs and if private sector does not take on this, then Customs itself must provide.</p> <p>Information must not be limited to policies, laws, orders, rules and regulations in effect but also proposed legislation under doing deliberation in advance of issuance. Must for disseminations are rulings and decisions.</p>
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A. Information of General Application

Standard 9.1

P	The Customs shall ensure that all relevant information of general application pertaining to Customs law is readily available to any interested person.
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Standard 9.2

P	When information that has been made available must be amended due to changes in Customs law, administrative arrangements or requirements, the Customs shall make the revised information readily available sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless advance notice is precluded.
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Transitional Standard 9.3

P	The Customs shall use information technology to enhance the provision of information.
N	Customs Website currently provides only rudimentary static information that does not respond to the RKC

Effecting Amendment to the Import SAD in the ICT: Present vs. New Systems

For selected goods declarations (red and yellow channels), this procedure can be effected at the level of a Customs Appraiser but only prior to assessment or reversion from selected to greenlane processing.

For green channel entries, these are systems assessed right after selectivity so the appraiser can no longer make regular amendment. Selected shipments already reverted green channel are similarly assessed and likewise unamendable in the regular fashion. In both situations, any request for amendment to the SAD can only be effected thru post entry under the current system and thru entry removal and replacement when the new system is implemented. In the former procedure, a second

version of the SAD is created under Post Entry which reflects the changes made while retaining the original version of the entry.

Under the revised ICT, should amendment be allowed after system assessment, the previous record will be removed and a new declaration will have to be made.

For all cases, what is needed is to clearly specify the conditions under which amendment maybe allowed. One issue is the definition or meaning of the phrase in Standard 3.27 "...provided that when the request is received they have not begun to check the Goods declaration or to examine the goods." It is recommended that this provision be interpreted to mean "selected" or not selected or green but subsequently ordered to be examined as when derogatory information is received. Furthermore, for purposes of Standard 3.28, legislation must be made clear that amendment may only be allowed provided that the results of the examination or action taken by Customs does not warrant the seizure of the goods.

Specific Annex Gap Analysis: Compliant Provisions

- **Specific Annex Gap Analysis: Compliant Provisions: LEGEND**
 - **Specific Annex A: Arrival of goods in a customs territory**
 - **Chapter 1: Formalities prior to the lodgement of the Goods declaration**
 - Recommended Practice 2
 - Introduction of goods into the Customs territory
 - a. Places at which goods may be introduced into the Customs territory
 - Standard 3
 - b. Obligations of the carrier
 - Standard 4
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 - Standard 8
 - Recommended Practice 11
 - Production of goods to the Customs
 - b. Arrival outside working hours
 - Standard 13
 - Recommended Practice 14
 - Unloading
 - a. Places of unloading
 - Standard 15
 - Recommended Practice 16
 - b. Commencement of unloading
 - Standard 17
 - Recommended Practice 18
 - Charges
 - Standard 19
 - **Chapter 2: Temporary storage of goods**
 - Strategy
 - Principles
 - Standard 1
 - Standard 2
 - Recommended Practice 3
 - Documentation
 - Standard 4
 - Management of temporary stores
 - Standard 6
 - Authorized operations
 - Standard 7
 - Duration of temporary storage
 - Standard 9
 - Goods deteriorated or damaged
 - Recommended Practice 11
 - Removal from a temporary store
 - Standard 12
 - Standard 13
 - **Specific Annex B: Importation**
 - Strategy
 - **Chapter 1: Clearance for home use**
 - Documentation
 - Recommended Practice 2
 - **Chapter 2: Re-importation in the same state**

- Field of application
 - Standard 2
 - Standard 3
 - Standard 4
 - Standard 5
 - Standard 6
 - Standard 7
 - Time limit for the re-importation in the same state
 - Standard 8
 - Competent Customs offices
 - Standard 9
 - Goods declaration
 - Standard 10
 - **Chapter 3: Relief from import duties and taxes**
 - Field of application
 - Standard 2
 - Standard 3
 - Recommended Practice 4
 - Standard 5
- **Specific Annex C: Exportation**
 - Strategy
 - Annex C1: Outright exportation
 - Evidence of arrival at destination
 - Standard 3
- **Specific Annex D: Customs Warehouses and Free Zones**
 - Strategy
 - **Chapter 1: Customs warehouses**
 - Classes of Customs warehouses
 - Standard 3
 - Establishment, management and control
 - Standard 4
 - Admission of goods
 - Standard 6
 - Deterioration of goods
 - Standard 13
 - Removal of goods
 - Standard 14
 - Standard 15
 - Closure of a Customs warehouses
 - Standard 16
 - **Chapter 2: Free Zones**
 - Establishment and control
 - Standard 2
 - Admission of goods
 - Standard 5
 - Recommended Practice 6
 - Standard 7
 - Standard 8
 - Security
 - Recommended Practice 10
 - Authorized operations
 - Standard 11
 - Standard 12
 - Goods consumed within the free zone
 - Standard 13
 - Duration of stay

- Standard 14
 - Removal of goods
 - Standard 16
 - Standard 17
 - Assessment of duties and taxes
 - Standard 19
 - Standard 20
 - Closure of a free zone
 - Standard 21
- **Specific Annex E: Transit**
 - **Chapter 1: Customs transit**
 - Field of application
 - Standard 3
 - Formalities at the office of departure
 - b. Sealing and identification of consignments
 - Standard 8
 - Recommended Practice 9
 - Standard 10
 - Standard 13
 - Recommended Practice 14
 - Termination of Customs transit
 - Standard 23
 - Standard 24
 - Recommended Practice 25
 - **Chapter 2: Transshipment**
 - Principles
 - Standard 2
 - Recommended Practice 3
 - Admission to transshipment
 - a. Declaration
 - Standard 4
 - Standard 5
 - Recommended Practice 6
 - b. Examination and identification of goods
 - Standard 7
 - c. Additional control measures
 - Standard 8
 - Recommended Practice 9
 - Recommended Practice 10
 - **Chapter 3: Carriage of goods coastwise**
 - Coverage
 - Field of application
 - Standard 2
 - Recommended Practice 3
 - Loading and unloading
 - Standard 7
 - Recommended Practice 10
 - Documentation
 - Recommended Practice 14
- **Specific Annex F: Processing**
 - **Chapter 1: Inward processing**
 - Field of application
 - Standard 2
 - Recommended Practice 4
 - Standard 5
 - Recommended Practice 6

- Administrative settlement of Customs offences
 - Recommended Practice 20
 - Standard 22
 - Standard 23
 - Standard 24
 - Standard 26
 - Right of Appeal
 - Standard 27
 - **Specific Annex J: Special Procedures**
 - Background
 - Strategy
 - **Chapter 1: Travellers**
 - Field of application
 - Standard 2
 - Standard 3
 - Recommended Practice 6
 - Recommended Practice 7
 - Recommended Practice 8
 - Standard 10
 - Standard 11
 - Standard 12
 - Standard 13
 - Entry
 - Standard 18
 - Standard 19
 - Standard 20
 - Standard 21
 - Standard 22
 - Standard 23
 - Standard 30
 - Re-exportation
 - Standard 32
 - Departure
 - Standard 33
 - Standard 34
 - Standard 35
 - Standard 36
 - Transit passengers
 - Standard 38
 - **Chapter 2: Postal traffic**
 - Principles
 - Standard 2
 - Clearance of postal items
 - b. Production to the Customs
 - Standard 6
 - Standard 7
 - Recommended Practice 8
 - **Chapter 3: Means of transport for commercial use**
 - Temporary admission of means of transport for commercial use
 - Recommended Practice 3
 - Standard 4
 - Standard 5
 - Recommended Practice 6
 - Temporary admission of parts and equipment
 - Recommended Practice 7
 - Recommended Practice 8

- Arrival
 - Standard 9
 - Departure
 - Standard 15
 - **Chapter 4: Stores**
 - Strategy
 - Stores on board arriving vessels, aircraft or trains
 - a. Exemption from import duties and taxes
 - Standard 3
 - Standard 5
 - Supply of stores exempted from duties and taxes
 - Standard 15
 - Standard 16
 - Standard 17
 - **Chapter 5: Relief Consignments**
 - Recommendations
 - Field of Application
 - Standard 3
 - Recommended Practice 5
 - Recommended Practice 6
- **Specific Annex K: Origin**
 - **Chapter 1: Rules of origin**
 - Coverage
 - Overall Strategy
 - Principle
 - Standard 1
 - Rules of Origin
 - Standard 2
 - Recommended Practice 3
 - Recommended Practice 4
 - Recommended Practice 5
 - Recommended Practice 6
 - Special cases of qualification for origin
 - Recommended Practice 7
 - Recommended Practice 8
 - Recommended Practice 9
 - Recommended Practice 10
 - Standard 11
 - Direct transport rule
 - Recommended Practice 12
 - Information concerning rules of origin
 - Standard 13
 - **Chapter 2: Documentary evidence of origin**
 - Requirement of documentary evidence of origin
 - Recommended Practice 5
 - Languages to be used
 - Recommended Practice 7
 - Authorities and other bodies empowered to issue certificates of origin
 - Standard 9
 - Recommended Practice 11
 - Sanctions
 - Standard 13
 - **Chapter 3: Control of Documentary evidence of origin**
 - Reciprocity
 - Standard 2
 - Requests for control

- Recommended Practice 3
- Standard 4
- Standard 5
- Standard 6
- Standard 7
- Standard 8
- Standard 9
- Release of the goods
 - Standard 10
- Miscellaneous provisions
 - Standard 11
 - Standard 12
 - Standard 13

Specific Annex Gap Analysis: Compliant Provisions

LEGEND:	
P	Provision of RKC
G	RKC Guidelines
N	Notes on Compliance

Specific Annex A: Arrival of goods in a customs territory

Accept Annex A but enter reservations on:

- Recommended Practice 12 Chapter 1 since TCCP requires documents to be submitted in the official language; and
- Recommended Practice 10 of Chapter 2 since TCCP does not provide for extension of the period of temporary storage.

All other Standards and Recommended Practices must be reflected in a Manual of Operations. Customs does not have one now and this process of acceding to the RKC is a golden opportunity to make one.

Chapter 1: Formalities prior to the lodgement of the Goods declaration

Recommended Practice 2

P	Customs formalities prior to the lodgement of the Goods declaration should apply equally, without regard to the country of origin of the goods or the country from which they arrived.
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Introduction of goods into the Customs territory

a. Places at which goods may be introduced into the Customs territory

Standard 3

P	National legislation shall specify the places at which goods may be introduced into the Customs territory.
	Only when they consider it necessary for control purposes shall the Customs specify

	<p>the routes which must be used to convey the goods directly to a designated Customs office or other places specified by the Customs. In determining these places and routes, the factors to be taken into account shall include the particular requirements of the trade.</p> <p>This Standard shall not apply to goods on board vessels or aircraft crossing the Customs territory that do not call at a port or airport situated in that Customs territory.</p>
N	<ul style="list-style-type: none"> • Section 702 of the TCCP empowers the President on recommendation of the Commissioner of Customs and the Minister of Finance to open international ports of entries. • Section 606 empowers the President to subject premises to the jurisdiction of the Bureau of Customs • Section 1001 makes it the duty of vessels engaged in foreign trade to touch at ports of entry only, except as otherwise specifically allowed. • Section 1101 authorizes the Secretary of Finance, upon recommendation of the Commissioner of Customs and the Director of the Civil Aeronautics Administration to designate airports of entry for civil aircraft which shall be considered as a port of entry for aliens arriving on such aircraft and as a place for quarantine inspection

b. Obligations of the carrier

Standard 4

P	The carrier shall be held responsible to the Customs for ensuring that all goods are included in the cargo declaration or are brought to the attention of the Customs in another authorized manner.
N	Sections 1004, 1005 and 1105 require the master of the vessel or pilot-in-command to produce documents among which are manifest and list of all cargo laden on board.

Standard 5

P	<p>The fact of having introduced goods into the Customs territory shall entail the obligation for the carrier to convey them directly using designated routes, where required, and without delay to a designated Customs office or other place specified by the Customs. In doing so the nature of the goods or their packaging shall not be altered nor shall any seals be interfered with.</p> <p>This Standard shall not apply to goods on board vessels or aircraft crossing the Customs territory that do not call at a port or airport situated in that Customs territory.</p>
N	Section 1021 requires the master of the vessel to state under oath before departure that all cargo conveyed on said vessel, with destination to the Philippines, has been duly discharged or accounted for.

Standard 6

P	Where the conveyance of the goods from the place of their introduction into the Customs territory to a designated Customs office or other specified place is interrupted by accident or force majeure, the carrier shall be required to take
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	reasonable precautions to prevent the goods from entering into unauthorized circulation and to advise the Customs or other competent authorities of the nature of the accident or other circumstance which has interrupted the journey.
N	Sections 1016 and 1017 stipulate the responsibilities of the master of the vessel in situations described.

Standard 8

P	Where the Customs require documentation in respect of the production of the goods to the Customs, this shall not be required to contain more than the information necessary to identify the goods and the means of transport.
N	<p>The guidelines to this recommended practice provides that the documents required for the production of goods should contain no more than a description of the goods and of the packages (marks and numbers, quantity and weight and an identification of the means of transport). However for purposes of risk analysis and advance clearance which are likewise recommended best practices, consignee and shipper are very important data elements.</p> <p>Also, Section 1005 of the TCCP specifically provides that manifest shall include the port of departure, the port of delivery and the names of the consignees in addition to the marks, numbers, quantity and description of the packages. These data elements are all in the ship's regular manifest and all are provided by the shipper per the pro-forma bill of lading or airway bill.</p> <p>Strictly limiting the data elements in the manifest to the enumerations in the guidelines would not meet the present requirements of Philippine Customs. However the guidelines are non-binding and what is important is that legislation does not require data that is not being used for effective customs control. Viewed from this "usefulness" standpoint, legislation is compliant with this standard.</p>

Recommended Practice 11

P	The Customs office responsible for the acceptance of the documentation required for the production of the goods should also be competent for acceptance of the Goods declaration
N	All open ports of entries are all manned and can received both manifests and entries.

Production of goods to the Customs

b. Arrival outside working hours

Standard 13

P	The Customs shall specify the precautions to be taken by the carrier to prevent the goods from entering into unauthorized circulation in the Customs territory when they arrive at a Customs office outside working hours.
N	<ul style="list-style-type: none"> • Standard 13 requires Customs to indicate the precautions that the carrier must take. Usually when the goods arrive outside the working hours the carrier is required to keep the goods at a specific place at or in the vicinity of this Customs office and that meets Customs security requirements. • Carriers are not allowed to unload until after boarding formalities have been

	completed and documents on goods carried on board secured. Boarding Officers and Guards are required while the vessel is in port.
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Recommended Practice 14

P	At the request of the carrier, and for reasons deemed valid by the Customs, the latter should, insofar as possible, allow the Customs formalities prior to the lodgement of the Goods declaration to be accomplished outside the designated hours of business of the Customs.
N	Port operations are on a 24-hour basis in all ports of entries and customs officers are entitled to overtime pay for working outside regular working period.

Unloading

a. Places of unloading

Standard 15

P	National legislation shall specify the places which are approved for unloading.
N	The opening of ports of entry are covered by legislation.

Recommended Practice 16

P	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should allow goods to be unloaded at a place other than the one approved for unloading.
N	There is an established procedure for authorizing vessels to call at a non-port of entry and unload goods thereat. Section 1001 provides "Vessels engaged in foreign trade shall touch at ports of entry only, except as otherwise specifically allowed."

b. Commencement of unloading

Standard 17

P	The commencement of unloading shall be permitted as soon as possible after the arrival of the means of transport at the place of unloading.
N	Section 1015 provides that unloading outside regular working hours maybe done on authority of the collector of customs conditioned on the payment of losses and overtime pay by the interested parties.

Recommended Practice 18

P	At the request of the person concerned and for reasons deemed valid by the Customs, the latter should, insofar as possible, allow unloading to proceed outside the designated hours of business of the Customs.
N	Section 1015 of TCCP.

Charges

Standard 19

P	Any expenses chargeable by the Customs in connection with: <ul style="list-style-type: none">• Accomplishment of Customs formalities prior to the lodgement of the Goods declaration outside the designated hours of business of the Customs;• Unloading goods at a place other than the one approved for unloading; or• Unloading goods outside the designated hours of business of the Customs shall be limited to the approximate cost of the services rendered.• Shall be limited to the approximate cost of the services rendered.
N	Customs regulations on fees and charges specify the principle of cost recovery.

Chapter 2: Temporary storage of goods

Strategy

- Accept the Chapter
- Enter reservation on Recommended Practice Number 10
- Issue regulations using the carriers commercial manifest even for those for further movement to a secondary store

Principles

Standard 1

P	Temporary storage of goods shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex
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Standard 2

P	The Customs shall authorize the establishment of temporary stores whenever they deem it necessary to meet the requirements of the trade.
N	Section 1901 and 1903 as well as Special Permits to Transfer

Recommended Practice 3

P	Temporary storage should be allowed for all goods irrespective of quantity, country of origin or country from which they arrived. However, goods which constitute a hazard, which are likely to affect other goods or which require special installations should be admitted only into temporary stores specially equipped and designated by the competent authorities to receive them
N	A separate facility for dangerous goods is allowed to operate whenever the trade requires.

Documentation

Standard 4

P	The only document to be required when goods are placed under temporary storage shall be that used to describe the goods when they are produced to the Customs
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N	In general, the manifest is the only document required particularly for sea cargo where there is only one operator per port. At NAIA, there are several temporary stores. For airlines with exclusive arrangement with a temporary store, only the manifest is required. However, there are some airlines that carry cargo destined for 2 or more temporary stores. In this case, manifest is used for the main store and a special document is required for transfers to secondary store.
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Management of temporary stores

Standard 6

P	The Customs shall lay down the requirements as regards the construction, layout and management of temporary stores and the arrangements for the storage of goods, for stock-keeping and accounting and for Customs control.
N	Section 1903

Duration of temporary storage

Standard 9

P	Where national legislation lays down a time limit for temporary storage, the time allowed shall be sufficient to enable the importer to complete the necessary formalities to place the goods under another Customs procedure.
N	The time limit for temporary store is limited by Section 1801 on the abandonment. A total time of 45 days is more than sufficient to complete formalities.

Goods deteriorated or damaged

Recommended Practice 11

P	Goods deteriorated, spoiled or damaged by accident or force majeure before leaving the temporary store should be allowed to be cleared as if they had been imported in their deteriorated, spoiled or damaged state provided that such deterioration, spoilage or damage is duly established to the satisfaction of the Customs.
N	Section 1704 Abatement or Refund on Articles Lost or Destroyed after Arrival

Removal from a temporary store

Standard 12

P	Any person having the right to dispose of the goods shall be entitled to remove them from a temporary store subject to compliance with the conditions and formalities in each case
N	Sections 1501 to 1508

Standard 13

P	National legislation shall specify the procedure to be followed when goods are not removed from a temporary store within the period allowed.
N	Sections 1801-02

Specific Annex B: Importation

Strategy

- Accept Annex B
- Enter reservations on
 - Recommended Practice 2 Chapter 1 that the alternative goods declaration to the standard format will be used only for some time sensitive air shipments such as company materials, newspapers and periodicals as well as time sensitive imports that maybe cleared planeside
 - Recommended Practice 6 and 7 of Chap 3 since its value to trade facilitation is minimal but revenue sensitive.
- Regularized Chapter 2 by including all the circumstances described in the chapter in a regulation on Importation in the Same State and by including re-importation as among those electronic documents that can be processed under the ICT system. Trade must be consulted on the most typical re-importation situations encountered so these may be provided regular processing as with the other customs operations. An appropriate information system must also be developed and interface exports with the Integrated ICT to support this Customs regime.
- At same time, care must be exercised to address risk to revenue as when there is no exportation or when the exportation was applied for refund.

Chapter 1: Clearance for home use

Documentation

Recommended Practice 2

P	National legislation should provide that goods may be declared in an alternative manner to the standard Goods declaration on the condition that it provides the necessary particulars relating to the goods to be cleared for home use.
G	<p>Customs usually specifies the types of goods that can be declared in this manner and normally extends the facility for goods which are in large volumes and of low risk or are unconditionally free of duties and taxes. This may include for example, newspapers, journals and periodicals, certain bulk construction materials such as cement or sand, etc.</p> <p>The alternative format to the standard Goods declaration could be a commercial document, for example, an invoice or a transport document, as long as the necessary particulars relating to the goods to be cleared for home use are contained in the commercial document.</p> <p>Customs is usually satisfied with a commercial document where the goods to be cleared for home use are not liable to import duties and taxes and the Goods declaration is not used for the compilation of statistics</p> <p>A number of international efforts are underway to standardize commercial and transport documents (e.g. International Maritime Organization and International Civil Aviation Organization cargo declaration formats). The Economic Commission for Europe (UN/ECE) has adopted a Recommendation on an aligned invoice lay-out key for international trade which is an example of a standardized format for a commercial invoice. The use of any of these standardized formats in lieu of a Goods declaration could be considered by administrations implementing this Recommended Practice.</p>

N	For some time sensitive air shipments such as newspapers and periodicals, terminal release is allowed using only simplified forms
S	Enter Reservation that this standard will be limited to certain types of goods such as company materials, documents, newspapers and periodicals and time sensitive imports that may be cleared planeside upon arrival.

Chapter 2: Re-importation in the same state

G	National legislation in most administrations usually includes provisions which enable re-imported goods to enter back into the Customs territory free of import duties and taxes and provides for the repayment of any export duties and taxes paid on exportation.
N	Section 105- t of the TCCP on "Philippine articles previously exported from the Philippines and returned without having been advanced in value or improved in condition by any process of manufacture or other means upon which no drawback or bounty has been allowed..." already covers most of the situations envisioned in this Chapter of Annex B. There are no provisions in the Customs Code against the Standards and Recommended Practices on Re-importation. Nonetheless it would do well for national legislation to provide specific guidelines on how to treat re-importation situations described herein instead of treating these on a case to case basis and decided by senior port officials, procedures that do not lend to facilitation.

Field of application

Standard 2

P	Re-importation in the same state shall be allowed even if only a part of the exported goods is re-imported.
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Standard 3

P	When circumstances so justify, re-importation in the same state shall be allowed even if the goods are re-imported by a person other than the person who exported them.
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Standard 4

P	Re-importation in the same state shall not be refused on the grounds that the goods have been used or damaged or have deteriorated during their stay abroad.
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Standard 5

P	Re-importation in the same state shall not be refused on the grounds that, during their stay abroad, the goods have undergone operations necessary for their preservation or maintenance provided, however, that their value at the time of exportation has not been enhanced by such operations.
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Standard 6

P	Re-importation in the same state shall not be limited to goods imported directly from abroad but shall also be granted for goods already placed under another Customs procedure.
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Standard 7

P	Re-importation in the same state shall not be refused on the grounds that the goods were exported without notification of intended return.
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Time limit for the re-importation in the same state

Standard 8

P	Where time limits are fixed beyond which re-importation in the same state will not be granted, such limits shall be of sufficient duration to take account of the differing circumstances pertaining to each type of case.
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Competent Customs offices

Standard 9

P	The Customs shall only require that goods re-imported in the same state be declared at the Customs office through which they were exported where this will facilitate the re-importation procedure.
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Goods declaration

Standard 10

P	No written Goods declaration shall be required for the re-importation in the same state of packings, containers, pallets and means of transport for commercial use which are in use for the international transport of goods, subject to the satisfaction of the Customs that the packings, containers, pallets and means of transport for commercial use were in free circulation at the time of exportation.
N	The procedures for the release of empty containers do not require goods declaration. Needed is to extend this procedure to pallets, packings and similar equipments for the transportation of goods.

Chapter 3: Relief from import duties and taxes

Field of application

Standard 2

P	National legislation shall enumerate the cases in which relief from import duties and taxes is granted.
N	Section 100 of the TCCP and 107 the NIRC subjects all imported articles to duty and vat respectively unless otherwise provided for in the said Codes or other laws.

Standard 3

P	Relief from import duties and taxes shall not be limited to goods imported directly from abroad but shall also be granted for goods already placed under another Customs procedure.
N	Goods placed in FEZs, Warehousing and Conditional Free Procedures when converted to Home Use may be granted relief from duties and taxes provided the basis provided is among those specifically provided in the laws.

Recommended Practice 4

P	Relief from import duties and taxes should be granted without regard to the country of origin of the goods or the country from which they arrived, except where an international instrument provides for reciprocity.
N	Laws providing relief are pass by Congress and are granted not on basis of source but on who are the beneficiary and the nature of the goods.

Standard 5

P	National legislation shall enumerate the cases in which prior authorization is required for relief from import duties and taxes and specify the authorities empowered to grant such authorization. Such cases shall be as few as possible.
N	Examples of this are exemptions granted by the Board of Investment under the Export Incentives and the Investment Incentive Acts. While these laws provide the general basis for the relief, availments against the general incentive must be authorized per shipment prior to release by Customs to insure there is no abuse of the relief or of the exemption.

Specific Annex C: Exportation

Strategy

- Accept Annex C
- Immediately identify with EDC and PhilExport export commodities that needs the facilitation of Recommended Practice 2
- Amend PD 930 to allow use of Commercial Invoice following the standards under international conventions such as the UN/ECE Invoice Layout Key (see attach) as alternative exports goods declaration. In some respects, this alternative document even better describes the exported goods and particulars
- Develop a system and issue regulations allowing use of this standard commercial invoice

Chapter 1: Outright exportation

Evidence of arrival at destination

Standard 3

P	The Customs shall not require evidence of the arrival of the goods abroad as a matter of course.
N	Only when Customs is in doubt or for high risk export is such an evidence required.

Specific Annex D: Customs Warehouses and Free Zones

G	The scope of this procedure may not cover only imported goods. For example, some administrations allow goods that are liable to, or have borne, internal duties and taxes (whether of national origin or previously imported against payment of import duties and taxes) to be stored in a Customs warehouse in order that they may qualify for exemption from or repayment of such internal duties and taxes. Thus the definition of the term "Customs warehousing procedure" covers the warehousing of imported goods since this is the use generally authorized, but the storage of goods of national origin is recommended as an additional case of the use of Customs warehouses. (See also Recommended Practice 9.) Similarly, the deposit in a Customs warehouse of goods that have previously been dealt with under another Customs procedure, such as temporary admission, with a view to subsequent exportation or other authorized disposal is also possible.
N	Section 1901-1908 of the TCCP provides the legal basis for the warehousing of imported goods to achieve the objectives of this Annex. However, the expanded use of the facility to goods of national origin as well as those previously dealt with under previous regimes is not supported by the TCCP.

Strategy

- Accept Annex D1
- Enter Reservations on following Standard 2 and RPs 5, 7, 8, 9, 11, 12
- Issue implementing regulations on Standard 10

Chapter 1: Customs warehouses

Classes of Customs warehouses

Standard 3

P	National legislation shall provide for Customs warehouses to be used solely by specified persons (Private Customs warehouses) when this is necessary to meet the special requirements of the trade.
N	Historically and under existing legislation, private bonded warehouses were allowed for manufacturing facilities catering to the domestic market.

Establishment, management and control

Standard 4

P	The Customs shall lay down the requirements for the establishment, suitability and management of the Customs warehouses and the arrangements for Customs control. The arrangements for storage of goods in Customs warehouses and for stock-keeping and accounting shall be subject to the approval of the Customs.
N	The implementing regulations to Sections 1900-08 clearly defined all these requirements and arrangements.

Admission of goods

Standard 6

P	The Customs shall specify the kinds of goods which may be admitted to private Customs warehouses
N	In determining if the applicant should be extended the use of the facility, the kinds of goods allowable to be stored therein is normally verified against the business of the applicant. Only raw materials for the manufacture of goods for the domestic market are allowed.

Deterioration of goods

Standard 13

P	Goods deteriorated or spoiled by accident or force majeure while under the Customs warehouse procedure shall be allowed to be declared for home use as if they had been imported in their deteriorated or spoiled state, provided that such deterioration or spoilage is duly established to the satisfaction of the Customs.
N	Section 1704 allows abatement among others while the goods remain in customs custody after unloading. Warehouse goods remain under customs custody.

Removal of goods

Standard 14

P	Any person entitled to dispose of the goods shall be authorized to remove all or part of them from one Customs warehouse to another or to place them under another Customs procedure, subject to compliance with the conditions and formalities applicable in each case.
N	Allowable

Standard 15

P	National legislation shall specify the procedure to be followed where goods are not removed from the Customs warehouse within the period laid down.
N	Section 1908

Closure of a Customs warehouses

Standard 16

P	In the event of the closure of a Customs warehouse, the persons concerned shall be given sufficient time to remove their goods to another Customs warehouse or to place them under another Customs procedure, subject to compliance with the conditions and formalities applicable
N	Section 1905

Chapter 2: Free Zones

G	<ul style="list-style-type: none"> • Accept Chapter D2 • As defined in the RKC, FREE ZONE means a part of the territory of a Contracting Party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the Customs territory. • RA 7916 provides for free trade zone to be operated and managed as separate customs territory. • Therefore the RKC standards and recommended practices must be incorporated in the IRRs of free trade zone charters.
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Establishment and control

Standard 2

P	National legislation shall specify the requirements relating to the establishment of free zones, the kinds of goods admissible to such zones and the nature of the operations to which goods may be subjected in them.
N	RA 7916; Parts II, III and X of the IRR.

Admission of goods

Standard 5

P	Admission to a free zone shall be authorized not only for goods imported directly from abroad but also for goods brought from the Customs territory of the Contracting Party concerned.
N	Section 4 Part V of IRR

Recommended Practice 6

P	<p>Admission to a free zone of goods brought from abroad should not be refused solely on the grounds that the goods are liable to prohibitions or restrictions other than those imposed on grounds of:</p> <ul style="list-style-type: none"> • Public morality or order, public security, public hygiene or health, or for veterinary or phytosanitary considerations; or • The protection of patents, trade marks and copyrights, irrespective of country of origin, country from which arrived or country of destination. <p>Goods which constitute a hazard, which are likely to affect other goods or which require special installations should be admitted only to free zones specially designed to receive them.</p>
N	Section 1 Rule X provides that only prohibited merchandise may not be brought to the restricted areas of the ecozones.

Standard 7

P	Goods admissible to a free zone which are entitled to exemption from or repayment of import duties and taxes when exported shall qualify for such exemption or repayment immediately after they have been introduced into the free zone.
N	<ul style="list-style-type: none">• Deliveries from customs bonded warehouses to free zones like deliveries to other Customs bonded warehouses are considered constructive exports and are therefore entitled exemption from payment of duties and taxes for which the covering security may already be canceled• However, raw materials already paid duties and taxes on import can not claim refund as the only modes for importing raw materials conditional free are bonded warehousing, duty drawback and ecozones.

Standard 8

P	Goods admissible to a free zone which are entitled to exemption from or repayment of internal duties and taxes when exported shall qualify for such exemption or repayment after they have been introduced into the free zone.
N	Section 106 A2 (a) of the NIRC is considered deemed exports.

Security

Recommended Practice 10

P	The Customs should not require security for the admission of goods to a free zone.
N	No security is required for admission. However, a chargeable transportation bond is being required to secure the goods while in transit from the port of entry to the free zone. Still legislation may be considered as compliant.

Authorized operations

Standard 11

P	Goods admitted to a free zone shall be allowed to undergo operations necessary for their preservation and usual forms of handling to improve their packaging or marketable quality or to prepare them for shipment, such as breaking bulk, grouping of packages, sorting and grading, and repacking
N	The generally accepted principle is free movement of goods inside the free zone. Customs presence and formalities normally applies only at the borders

Standard 12

P	Where the competent authorities allow processing or manufacturing operations in a free zone, they shall specify the processing or manufacturing operations to which goods may be subjected in general terms and/or in detail in a regulation applicable throughout the free zone or in the authority granted to the enterprise carrying out these operations.
N	Part I of the IRR to RA7916 among others define the various types of ecozone enterprises and the various activities they may engage into.

Goods consumed within the free zone

Standard 13

P	National legislation shall enumerate the cases in which goods to be consumed inside the free zone may be admitted free of duties and taxes and shall lay down the requirements which must be met.
G	Standard 13 covers not only goods such as catalysts and accelerators or retarders of chemical reactions which are used in the industrial processing, but also goods consumed by people working inside the free zones (office stores, fuel, food and beverages)
N	<ul style="list-style-type: none">• Section 1 Rule VIII Part V of the IRR to RA 7916 extends exemption “provided they are to be sold, stored, broken-up, repacked, assembled, manipulated, manufactured and/or mixed with foreign or domestic merchandise within the restricted areas in the ecozones”. Thus consumption in the PEZA ecozone is not entitled to exemption under the IRR.• Nonetheless we can construe the IRR as having a zero enumeration and therefore still compliant with this standard.• At the Subic SEFZ, there is no need to enumerate as the facility is a free port.

Duration of stay

Standard 14

P	Only in exceptional circumstances shall a time limit be imposed on the duration of the stay of goods in a free zone.
N	RA 7916 has done away with the period of storage that used to be 2 years.

Removal of goods

Standard 16

P	Goods admitted to or produced in a free zone shall be permitted to be removed in part or in full to another free zone or placed under a Customs procedure, subject to compliance with the conditions and formalities applicable in each case.
N	Revised MOA between EPZA and BOC and circularized under CMC 31-84 dated 20 Mar 1984.

Standard 17

P	The only declaration required for goods on removal from a free zone shall be the Goods declaration normally required for the Customs procedure to which those goods are assigned.
N	For entry into the Customs territory, only goods declaration for the Customs procedure involved is required. For farm-out and farm-in, other forms are required but these procedures are not removals

Assessment of duties and taxes

Standard 19

P	National legislation shall specify the point in time to be taken into consideration for the purpose of determining the value and quantity of goods which may be taken into home use on removal from a free zone and the rates of the import duties and taxes or internal duties and taxes, as the case may be, applicable to them.
G	Between the time when the goods entered the free zone and the time when they are taken into home use changes may occur in the Customs tariff or in the value of the goods, or their quantity may decrease through evaporation or other losses. It is therefore necessary to specify the point in time to be taken into consideration for the purpose of determining the value and quantity of the goods, and the rates of the import duties and taxes applicable
N	TCCP sets three conditions when importation is deemed terminated: shipment has arrived, entry has been made and payments made. If import not yet terminated, the current tariff rates, exchange rates and quantities apply. Also entry into the ecozone is considered not having been entered for duty and tax purposes.

Standard 20

P	National legislation shall specify the rules applicable for determining the amount of the import duties and taxes or internal duties and taxes, as the case may be, chargeable on goods taken into home use after processing or manufacturing in a free zone.
N	Section 3 Part V of the IRR to RA 7916

Closure of a free zone

Standard 21

P	In the event of the closure of a free zone, the persons concerned shall be given sufficient time to remove their goods to another free zone or to place them under a Customs procedure, subject to compliance with the conditions and formalities applicable in each case.
N	Section 4 Part XI of IRR

Specific Annex E: Transit

G	Customs transit" means the Customs procedure under which goods are transported under Customs control from one Customs office to another.
N	The regulations on the movement of goods from one Customs office to another is contained in separate regulations <ul style="list-style-type: none">• CAO 12-77 prescribes the "Rules, regulations and procedures on the Transshipment of Imported Cargoes from one port to another in the Philippines". While this regulation has as subject transshipment, the operation covered is transit under the above definition as it involves two customs offices. The reason for this is under Philippine Customs terminologies, transits are termed as domestic transshipment while transshipments are termed foreign transshipment.• The movement of shipments from the airport to ecozones is covered under

	separate orders and so are the movements to the SEZs of Subic and Clark.
S	To provide corresponding ICT systems support under the eCustoms project and issue consolidated regulations for transits reflecting the various standards and practices of the annex-chapter except for the following for which reservation should be raised.

Chapter 1: Customs transit

Field of application

Standard 3

P	Goods being carried under Customs transit shall not be subject to the payment of duties and taxes, provided the conditions laid down by the Customs are complied with and that any security required has been furnished.
N	Section 2101 and 2102

Formalities at the office of departure

b. Sealing and identification of consignments

Standard 8

P	The Customs at the office of departure shall take all necessary action to enable the office of destination to identify the consignment and to detect any unauthorized interference.
N	The transportation unit (container) may be sealed and assigned an escort to avoid and detect unauthorized interference. Advisory telegram or an electronic broadcast is sent to the port of destination to help the destination identify the transit cargo.

Recommended Practice 9

P	Subject to the provisions of other international conventions, the Customs should not generally require that transport units be approved in advance for the transport of goods under Customs seal.
G	Unless expressly required by other international agreements, approval of the transport-unit is not mandatory for transport under Customs seal. Customs shall decide whether the transport-unit is sufficiently secure for Customs transit purposes.

Standard 10

P	<p>When a consignment is conveyed in a transport-unit and Customs sealing is required, the Customs seals shall be affixed to the transport-unit itself provided that the transport-unit is so constructed and equipped that:</p> <ul style="list-style-type: none"> • Customs seals can be simply and effectively affixed to it; • No goods can be removed from or introduced into the sealed part of the transport-unit without leaving visible traces of tampering or without breaking the Customs seal; • It contains no concealed spaces where goods may be hidden; and • All spaces capable of holding goods are readily accessible for Customs
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	<p>inspection.</p> <ul style="list-style-type: none"> The Customs shall decide whether transport-units are secure for the purposes of Customs transit.
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Standard 13

P	When the Customs fix a time limit for Customs transit, it shall be sufficient for the purposes of the transit operations
N	Legislation does not set a time limit for transits. However, regulations exist for monitoring transits and aging transits not acknowledged at the port of destination

Recommended Practice 14

P	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend any period initially fixed.
N	Since there is no time limit, there is no need to request extension to a time limit. It is possible though that a transshipment maybe considered as beyond acceptable time limits and for valid reasons may be given extension.

Termination of Customs transit

Standard 23

P	National legislation shall not, in respect of the termination of a Customs transit operation, require more than that the goods and the relevant Goods declaration be presented at the office of destination within any time limit fixed, without the goods having undergone any change and without having been used, and with Customs seals, fastenings or identification marks intact.
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Standard 24

P	As soon as the goods are under its control, the office of destination shall arrange without delay for the termination of the Customs transit operation after having satisfied itself that all conditions have been met.
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Recommended Practice 25

P	Failure to follow a prescribed itinerary or to comply with a prescribed time limit should not entail the collection of any duties and taxes potentially chargeable, provided the Customs are satisfied that all other requirements have been met.
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Chapter 2: Transshipment

G	<p>“Transshipment” means the Customs procedure under which goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation.</p> <p>The only regulation issued on Transshipment is CMO 22-93 dated 22 June 93 on Supplemental Rules on Transshipments for Foreign</p>
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	<p>The CMO provides the period of stay in port of transshipments, the monitoring and control procedures to insure these are taken out of the country within the period prescribed and provides for a supervision fee by customs</p> <p>Many RKC provisions are not covered by this CMO albeit legislation is not inconsistent. What must be done is to complete the CMO by including the RKC provision not currently covered except for the following:</p> <ol style="list-style-type: none"> 1. Recommended Practice 6 - to maintain the status quo until a customs ICT system is set in place to allow electronic application, monitoring and control of transshipment operations 2. Recommended Practice 9 - no provision for application for extension. Overstaying are subjected to close supervision and control including supervision fee.
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Principles

Standard 2

P	Goods admitted to transshipment shall not be subject to the payment of duties and taxes, provided the conditions laid down by the Customs are complied with.
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Recommended Practice 3

P	Transshipment should not be refused solely on the grounds of the country of origin of the goods, the country from which they arrived or their country of destination.
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Admission to transshipment

a. Declaration

Standard 4

P	Only one Goods declaration shall be required for the purposes of transshipment.
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Standard 5

P	Any commercial or transport document setting out clearly the necessary particulars shall be accepted as the descriptive part of the Goods declaration for transshipment and this acceptance shall be noted on the document.
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Recommended Practice 6

P	The Customs should accept as the Goods declaration for transshipment any commercial or transport document for the consignment concerned which meets all the Customs requirements. This acceptance should be noted on the document.
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b. Examination and identification of goods

Standard 7

P	When the Customs consider it necessary, they shall take action at importation to ensure that the goods to be transshipped will be identifiable at exportation and that unauthorized interference will be readily detectable.
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c. Additional control measures

Standard 8

P	When the Customs fix a time limit for the exportation of goods declared for transshipment, it shall be sufficient for the purposes of transshipment.
N	Now 30 calendar days maximum which is more than sufficient as borne by experience.

Recommended Practice 9

P	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend any period initially fixed.
N	No provision for extension. However, these overstaying transshipments are subjected to differential monitoring.

Recommended Practice 10

P	Failure to comply with a prescribed time limit should not entail the collection of any duties and taxes potentially chargeable, provided the Customs is satisfied that all other requirements have been met.
N	The CMO only requires transfer to a designated area for overstaying transshipments, their inspection and close supervision and the collection of supervision fees.

Chapter 3: Carriage of goods coastwise

Coverage

Chapter 3 of Specific Annex E deals with the carriage coastwise of:

1. goods in free circulation
2. imported goods that have not been declared and which are transported in a vessel other than the importing vessel in which they arrived in the Customs territory. In Philippine Customs parlance this is termed domestic transshipment which is local transit with a change of carrier.

Field of application

Standard 2

P	The Customs shall allow goods to be transported under the carriage of goods coastwise procedure on board a vessel carrying other goods at the same time, provided that they are satisfied that the goods can be identified and other
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	requirements will be met.
N	The country being made up of over 7000 islands and with only 36 ports open to international trade, transporting imported goods to their final destination from their port of introduction from foreign would entail domestic transshipment thru domestic carriers carrying mostly goods in free circulation. Domestic transshipment involves delivery of goods to the master of a domestic carrier who will have responsibility to present the same to the Customs office at destination together with the transit manifest.

Recommended Practice 3

P	The Customs should require goods in free circulation being transported under the carriage of goods coastwise procedure to be segregated from other goods carried on board the vessel only when they consider it to be necessary for control purposes.
N	Customs regulations on domestic transshipment do not even require segregation of transshipment containers from free goods in the vessel.

Loading and unloading

Standard 7

P	National legislation shall specify the places which are approved for the loading and unloading of goods under the carriage of goods coastwise procedure and the times during which loading and unloading may be carried out.
N	Destination ports for domestic transshipment can only be any of the designated ports of entry where a customs office operates. Port of entry or not, however, the hours for loading and unloading are determined by the port authorities and issued as local port regulations.

Recommended Practice 10

P	When a vessel transporting goods under the carriage of goods coastwise procedure is diverted during the voyage, the Customs should, at the request of the person concerned, allow such goods to be unloaded under the procedure at a place other than that originally intended. Any expenses chargeable shall be limited to the approximate cost of the services rendered.
N	Para 1 Section III of CAO 12-77

Documentation

Recommended Practice 14

P	The Customs should grant a general authorization to convey goods under the carriage of goods coastwise procedure for vessels which trade regularly between specified ports.
N	Unless Customs issues specific disqualification to a transportation company, any carrier with the required carrier bond can regularly accept domestic transshipment.

Specific Annex F: Processing

Coverage of the Procedure

Inward processing - the Customs procedure under which certain goods can be brought into a Customs territory conditionally relieved from payment of import duties and taxes, on the basis that such goods are intended for manufacturing, processing or repair and subsequent exportation.

Compensating product - the products resulting from the manufacturing, processing or repair of goods for which the use of the inward processing procedure is authorized.

Equivalent goods - domestic or imported goods identical in description, quality and technical characteristics to those imported for inward processing which they replace.

Current Status of Compliance

Sections 2001-2004 of the TCCP on Manufacturing Bonded Warehouses provide the legal basis for the conduct of mainstream inward processing in the country. A person intending to regularly undertake inward processing may apply a license for his manufacturing/processing facility as a Customs Manufacturing Bonded Warehouse (CMBW).

CAO 2-91 and CMO 31-91 are the customs issuances implementing Sections 2001-04 of the TCCP.

Many inward processing situations cannot be addressed by Section 2001-04 of the TCCP and its implementing regulations. The regulations on the operations of Common Bonded Warehouses partly address the requirements of small companies. Currently there are 10 common garments Bonded Warehouses and 10 miscellaneous Common Bonded Warehouses which have hundreds of members called subcontractors. However, a moratorium on the establishment of more common warehouses had been issued after the discovery of massive abuses of the facilities.

Section 105-d of the TCCP has also been used as a basis for inward processing. It provides that "Articles brought into the Philippines for repair, processing or reconditioning to be re-exported upon completion of the repair, processing or reconditioning...upon giving of a bond in an amount equal to one-and -a half times the ascertained duties and taxes...". However, the regulations implementing the processing provision of the TCCP which is CAO 3-78 has been revoked after discovery of abuses.

Therefore the breadth of inward processing conceived in this Specific Annex of RKC is not completely supported by current legislation. Inward processing as conceived in the RKC does not require the intermediation of CMBWs (regular or common) nor is it a requirement that the importer and the processor be one and the same person. Also unsupported is termination of the process with "equivalent goods" rather than the goods imported.

Proposed Strategy of Compliance. – Accept this Specific Annex but enter reservations as indicated in the following gap analysis.

Chapter 1: Inward processing

Field of application

Standard 2

P	Goods admitted for inward processing shall be afforded total conditional relief from import duties and taxes. However, import duties and taxes may be collected on any products, including waste, deriving from the processing or manufacturing of goods admitted for inward processing that are not exported or treated in such a way as to
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	render them commercially valueless.
N	Sections 2001-04 of TCCP as implemented by CAO 2-91 and CMO 31-91; Section 105-d of TCCP

Recommended Practice 4

P	Inward processing should not be refused solely on the grounds of the country of origin of the goods, the country from which arrived or the country of destination.
N	Legislation is silent. Should be included in a general announcement following accession to the Convention.

Standard 5

P	The right to import goods for inward processing shall not be limited to the owner of the imported goods.
G	Inward processing covers not only typical inward processing where the importer is the owner of the goods, but also contract or "job" processing in which the foreign customer remains the owner of the imported goods and the actual importer only processes the goods under contract with the (foreign) owner.
N	Under the manufacturing bonded warehousing operations, the goods may just be consigned to the local manufacturer.

Recommended Practice 6

P	When, in the execution of a contract entered into with a person established abroad, the goods to be used are supplied by that person, inward processing should not be refused on the grounds that goods identical in description, quality and technical characteristics are available in the Customs territory of importation.
N	The Customs Code and the implementing orders/regulations do not contain provisions inconsistent with this R-Practice. The requirement that imported raw materials not be locally available (quality, quantity and price) is for the grant of incentives under the Exports Incentives Act and the Omnibus Investment Code and not for availment of Inward Processing. Therefore national legislation is compliant.

Placing goods under inward processing

a. Authorization for inward processing

Standard 8

P	National legislation shall specify the circumstances in which prior authorization is required for inward processing and the authorities empowered to grant such authorization.
N	Section 2001 of TCCP, CAO 2-91 and CMO 39-91 always require prior authorization for inward processing.

Standard 9

P	The inward processing authorization shall specify the manner in which operations permitted under inward processing shall be carried out.
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N	This matter is spelled out in the application for the operation of a CBMW, the authorization and the general provisions of the legislation.
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Recommended Practice 11

P	Persons who carry out regular inward processing operations should, on request, be granted a general authorization covering such operations.
N	Regular inward processing (rather than adhoc inward or situational) would have to avail of the facilities of a CMBW (either regular or common). As previously stated, use of section 105d has already been discontinued.

Standard 12

P	Where goods admitted for inward processing are to undergo manufacturing or processing, the competent authorities shall fix or agree to the rate of yield of the operation by reference to the actual conditions under which it is effected. The description, quality and quantity of the various compensating products shall be specified upon fixing or agreeing to that rate.
G	The rate of yield or the method of determining the rate should be set on the basis of production data and be identifiable in the operator's records. The rate or method of determining the rate is also subject to retrospective verification by Customs. It should be noted that Customs may not be the only authorities concerned in fixing the rate of yield.
N	While a Formula of Manufacture as verified and certified to by competent government agency is a required supporting document in applying for CMBWs, the rate of yield as claimed by the processor is subject to retrospective verification by Customs taking into account actual conditions.

Recommended Practice 13

P	Where the inward processing operations: <ul style="list-style-type: none"> • Relate to goods whose characteristics remain reasonably constant; • Are customarily carried out under clearly defined technical conditions; and • Give compensating products of constant quality; <p>The competent authorities should lay down standard rates of yield applicable to the operations.</p>
N	Formulas of manufacture prescribes standard yields which customs may use in lieu of actual production yields.

Stay of the goods in the Customs territory

Standard 15

P	The Customs shall fix the time limit for inward processing in each case.
N	<ul style="list-style-type: none"> • for Sec. 2002, nine months extendable for 3 months • for Sec. 105-D , six months

Recommended Practice 18

P	The competent authorities should permit processing operations to be carried out by a person other than the person accorded the facilities for inward processing. Transfer of ownership of the goods admitted for inward processing should not be necessary, provided that the person accorded the inward processing facilities remains responsible to the Customs for compliance with the conditions set out in the authorization for the entire duration of the operations.
N	This Recommended Practice is implemented between the Common Bonded Warehouse operator and the subcontractors. The warehouse operator is the person accorded inward processing and the one who remains responsible for compliance but the subcontractors are the real owners of the goods and the ones actually undertaking the manufacturing/processing operations. The arrangement in common bonded warehouse operations while not exactly the kind envisioned in this Recommended Practice essentially reflects the principle and achieves the purpose.

Termination of inward processing

b. Other methods of disposal

Recommended Practice 23

P	National legislation should provide that the amount of import duties and taxes applicable in the case where the compensating products are not exported shall not exceed the amount of import duties and taxes applicable to the imported goods admitted for inward processing.
N	Sections 2002 and 105d require payment of the corresponding duties and taxes on imported goods not exported.

Standard 24

P	Provision shall be made for terminating inward processing in respect of goods lost as a consequence of the nature of the goods, insofar as the compensating products are exported, provided that such loss is duly established to the satisfaction of the Customs.
G	When the nature or technical characteristics of the imported goods are altered as a result of unforeseeable circumstances or force majeure, so that it becomes impossible to obtain the compensating products for which an inward processing authorization has been issued, the person concerned should inform the supervising Customs office of what has happened. For the discharge calculation the altered goods may be considered as goods that are totally destroyed.
N	The abatement provision of Section 1704b of TCCP

Chapter 3: Drawback

G	<ul style="list-style-type: none">• “drawback procedure” means the Customs procedure which, when goods are exported, provides for a repayment (total or partial) to be made in respect of the import duties and taxes charged on the goods, or on materials contained in them or consumed in their production;• “equivalent goods” means domestic or imported goods identical in description, quality and technical characteristics to those under the drawback procedure
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	<p>which they replace.</p> <ul style="list-style-type: none"> • "drawback" means the amount of import duties and taxes repaid under the drawback procedure;
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Field of application

Standard 2

P	National legislation shall enumerate the cases in which drawback may be claimed.
N	Section 106 (a)-(c)

Payment of drawback

Standard 7

P	Drawback shall be paid as soon as possible after the claim has been verified
N	Section 106 (e) provides that claims shall be paid or granted within 60 days after receipt of the properly accomplished claims.

Specific Annex G: Temporary Admission

Coverage:

The Customs procedure under which certain goods can be brought into a Customs territory conditionally relieved totally or partially from payment of import duties and taxes; such goods must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

The fundamental principle of temporary admission with re-exportation in the same state is to allow, under certain conditions, the importation of goods into the Customs territory of the country of destination for a specified period without collecting the duties and taxes applicable to those goods.

Field of application

Standard 2

P	National legislation shall enumerate the cases in which temporary admission may be granted.
N	<p>Section 105</p> <p>B salvage equipments</p> <p>D articles for repair, processing or reconditioning</p> <p>G Effects of tourists or travelers</p> <p>G-1 Effects of foreign consultants</p> <p>I Articles for public entertainment, display or exposition</p> <p>J Articles of foreign film producers for making or recording motion picture films in the Phils</p> <p>M containers, holders and receptacles for particular exports</p> <p>Q Commercial samples</p>

Standard 3

P	Goods temporarily admitted shall be afforded total conditional relief from import duties and taxes, except for those cases where national legislation specifies that relief may be only partial.
N	Section 105 provides total relief for as long as there is also total re-exportation

Standard 4

P	Temporary admission shall not be limited to goods imported directly from abroad, but shall also be granted for goods already placed under another Customs procedure.
G	There seem to be a conflict between the wording of the standard and the guidelines. The standard only says "...already placed...". The guidelines uses "On termination..."
N	<p>There is no problem complying with this standard for transits and for goods coming from free ports or free zone.</p> <p>However, allowing temporary admission after the period of storage which is one interpretation of the phrase in the guidelines "on termination of warehousing" is not consistent with Sections 1907 and 1908 which provisions limit withdrawal to consumption, transportation to another port, for exportation or for delivery on board an international aircraft or vessel. Section 1908 provides that articles not withdrawn at the expiration of the prescribed period shall be sold at public auction.</p> <p>We should interpret this standard as applicable within the period of storage in the case of goods already entered under warehousing. That the phrase "on termination..." means the warehousing procedure must be terminated with the coming into effect of the temporary admission. After all guidelines have no legal force and effect.</p>

Formalities prior to the granting of temporary admission

Standard 7

P	National legislation shall enumerate the cases in which prior authorization is required for temporary admission and specify the authorities empowered to grant such authorization. Such cases shall be as few as possible.
G	<ul style="list-style-type: none">• May be obtained from a particular authority either before the goods are introduced into the Customs territory or when the goods are already in temporary store or in a Customs warehouse.• Need not be sought for each individual consignment of goods but for operations of the same type carried out by the same person over a specified period or for a particular company.• Customs should endeavor to make the Customs office of entry competent to grant temporary admission to the goods at the time of arrival and to limit as far as possible the cases in which prior authorization is required
N	Section 105 subpara b, d, g, g-1,i, j, m and q are the situations under which temporary admission under bond (conditionally free imports) may be allowed. In all these cases, no prior authorization is required and the Collector of Customs has the prerogative to extend the period within which the goods must be re-exported.

Recommended Practice 8

P	The Customs should require that the goods be produced at a particular Customs office only where this will facilitate the temporary admission.
N	In actual operations, customs clearance under temporary admission (conditionally free imports) is undertaken at and by the office at the port of entry. Each port of entry has a full complement of examiners that can identify the goods. Should there be need for experts to assist in the identification of the goods, Customs officials are allowed by law to engage their services

Time limit for re-exportation

Standard 13

P	The Customs shall fix the time limit for temporary admission in each case.
N	Section 105 b, d, g, g-1, i, j, m and q all provide time limits within which re-exportation in the same state must be made

Cases of temporary admission

a. Total condition relief from import duties and taxes

Recommended Practice 22

P	<p>Temporary admission with total conditional relief from duties and taxes should be granted to the goods referred to in the following Annexes to the Convention on Temporary Admission (Istanbul Convention) of 26 June 1990:</p> <ol style="list-style-type: none">1. Goods for display or use at exhibitions, fairs, meetings or similar events" referred to in Annex B.1.2. Professional equipment" referred to in Annex B.2.3. Containers, pallets, packings, samples and other goods imported in connection with a commercial operation" referred to in Annex B.3.4. Goods imported for educational, scientific or cultural purposes" referred to in Annex B.5.5. Travellers' personal effects and goods imported for sports purposes" referred to in Annex B.6.6. Tourist publicity material" referred to in Annex B.7.7. Goods imported as frontier traffic" referred to in Annex B.8.8. Goods imported for humanitarian purposes" referred to in Annex B.9.9. Means of transport" referred to in Annex C.10. Animals" referred to in Annex D.
N	Total relief is extended under Section 105 of the TCCP for 1, 2, 3, 4, 5, 6 and 8 above. No 7 is not applicable since the Philippines does not have any common land border with any country. Means of Transport is strictly speaking not an importation unless circumstance so it is not subject to import duty.

Specific Annex H: Offences

Coverage

- Customs offence means any breach, or attempted breach, of Customs law.
- Administrative Settlement of a Customs offence means the procedure laid down by national legislation under which the Customs are empowered to settle a Customs offence either by ruling thereon or by means of a compromise settlement.
- Compromise settlement means an agreement under which the Customs, being so empowered, consent to waive proceedings in respect of a Customs offence subject to compliance with certain conditions by the person(s) implicated in that offence.

Overall Strategy

- The fundamental principles as well as most of the standards and recommended practices in this Annex are already being observed by Philippine Customs.
- It will not subtract but would only add to the quality of observance of the principles and implementation of laws, rules and regulations if these are clearly stated in Customs legislation.
- Recommend that there be a part in the Customs Operation Manual to be devoted to customs offenses the opening portions of which should state the principles enunciated in this specific annex.

Principles

Standard 2

P	National legislation shall define Customs offences and specify the conditions under which they may be investigated, established and, where appropriate, dealt with by administrative settlement.
N	Part 4 Title VI (Sections 2501-2536 on Surcharges, Fines and Forfeitures) and Section. 27 and 29, RA 8290.

Standard 3

P	National legislation shall specify which persons can be held responsible in connection with the commission of a Customs offence.
N	Part 3 Title VII (Penal Provisions: 3601-3612) of the TCCP specifies the person responsible, the condition under which they are made responsible and the corresponding punishments.

Standard 4

P	National legislation shall specify a period beyond which proceedings in connection with Customs offences may no longer be taken and shall fix the date from which that period shall run.
G	For many Customs offences documentary evidence contained in the records of companies can be particularly relevant. Therefore a link between the period of limitation and the period in which importers and exporters are obliged to retain their business records is important.
N	<ul style="list-style-type: none"> • Section 1603 on Finality of Liquidation provides that "when articles have been entered and passed free of duty or final adjustment of duties made, with subsequent delivery, such entry and passage free of duty or settlement of duties will, after the expiration of one year, from the date of final payment of duties, in

	<p>the absence of fraud or protest, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative."</p> <ul style="list-style-type: none"> • ACT 3326 "An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide when Prescription Shall Begin to Run"
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Investigation and establishment of Customs offences

Standard 5

P	<p>National legislation shall specify the conditions under which the Customs are empowered to:</p> <ul style="list-style-type: none"> • examine goods and means of transport; • require the production of documents or correspondence; • require access to computerized databases; • search persons and premises; and • secure evidence.
N	<p>Part 1 Title VI (Section 2201-2212) and Part 2 Title VII 2514, 3115 and 3516 Section 3503 of the TCCP as implemented by Section. IV-B, C and D of CAO 4-2004.</p>

Standard 7

P	<p>The Customs shall not search premises unless they have reasonable grounds to suspect smuggling or other Customs offences which are regarded as serious.</p>
N	<ul style="list-style-type: none"> • Searching of premises is a law enforcement operations. CMO 13-94 prohibits customs personnel from engaging in law enforcement operations outside a customs zones without explicit written authorization granted by the Customs Commissioner or by the Deputy Commissioner for Intelligence and Enforcement or by either the Service Chief for Intelligence or for Enforcement. • In the evaluation of applications for written authorization, only operations which are likely to succeed in the sense that all the evidences for the violation imputed are obtainable and there are no alibis or defenses which cannot be overcome shall be approved.

Standard 8

P	<p>The Customs shall inform the person concerned as soon as possible of the nature of the alleged offence, the legal provisions that may have been contravened and, as appropriate, the possible penalties.</p>
N	<p>Most instances of customs offenses starts with the seizure of goods. A recommendation for the issuance of a Warrant of Seizure and Detention is made by the apprehending officer to the Collector of the Port describing the nature and extent of the offense and the specific provision of the Customs Code mandating seizure. The person (offender) is served the warrant together with a copy of the seizure recommendation. Pending the setting of the hearing date, the goods are placed under hold order and transferred to a security warehouse.</p> <p>As the liability for the forfeiture of the goods is being heard, the apprehending officers undertake further investigation to ascertain if there is any criminal liability punishable</p>

	under Part 3 Title VII of the Customs Code as well as of the Revised Penal Code and who should be held criminally liable. Evidence will have to be gathered to prove that the person(s) have committed the punishable acts on the goods" knowing the same to have been imported contrary to law". In all cases, subpoena duces tecum and ad testificadum in issued which represents compliance to the principles of this Standard. Section. 2301, 2303 and 2304, TCC
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Procedure to be followed when a Customs offence is discovered

Standard 9

P	National legislation shall specify the procedure to be followed by the Customs after it has been discovered that a Customs offence has occurred and the measures they may take.
G	<p>The intention of this provision is to protect the alleged offender, as well as Customs, in ensuring that all the technicalities involved have been complied with in accordance with the law. Such procedures address the seizure of goods; detention of persons and goods; search of persons, goods and premises; arrest and bail; first information report, etc.</p> <p>In some countries, these procedures are established in a general code relating to criminal procedure.</p>
N	<p>There are a number of Customs Administrative and Memorandum Orders issued to achieve the intention of this RKC Standard:</p> <ul style="list-style-type: none"> • CAO 09-93- Governing the Issuance of WSDs, the Conduct of Seizure Proceedings and Procedures in Appeals • CAO 02-93- Appreciation of documents executed by foreign based witnesses in seizure and forfeiture proceedings • CMO 47-90- Preparation and Disposition of Apprehension Reports and WSDs • CMO 29-97- Mandatory Service of Notices of Orders, Decisions and Other Proceedings in all Seizure and Forfeiture cases • Others: CAO 04-94, CMOs 10-99, 07-91

Seizure or detention of the goods or means of transport

Standard 11

P	<p>The Customs shall seize goods and/or means of transport only when :</p> <ul style="list-style-type: none"> • they are liable to forfeiture or confiscation; or • they may be required to be produced as evidence at some later stage in the procedure.
N	<p>Seizure of the carrier or means of transport is undertaken when it can be shown it was used in the commission of the offense and that it is not a common carrier. Section. 2530, 2531, 2532, 2533 and 2534</p>

Standard 12

P	If a Customs offence relates only to part of a consignment, only that part shall be seized or detained, provided that the Customs are satisfied that the remainder of the consignment did not serve, directly or indirectly, in the commission of the offence.
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N	Grounds for seizure are clearly defined. Those without offense may still be seized provided it can be shown that they were used as a means for the commission of the offense as for example to conceal the misdeclared or undeclared goods.
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Standard 13

P	When the Customs seize or detain goods and/or means of transport, they shall furnish the person concerned with a document showing: <ul style="list-style-type: none"> • the description and quantity of the goods and means of transport seized or detained; • the reason for the seizure or detention; and • the nature of the offence.
N	Sections 2301, 2304, 2305 and 2306 TCCP

Recommended Practice 14

P	The Customs should release seized or detained goods against adequate security, provided that the goods are not subject to any prohibitions or restrictions or needed as evidence at some later stage in the procedure.
N	Section 2301

Recommended Practice 16

P	Means of transport should only be forfeited or confiscated where: <ul style="list-style-type: none"> • the owner, operator or person in charge was, at the time, a consenting party or privy to the Customs offence, or had not taken all reasonable steps to prevent the commission of the offence; or • the means of transport has been specially constructed, adapted or altered or fitted in any manner for the purpose of concealing goods; or • restoration of the means of transport which has been specially altered or adapted is not possible.
N	Section 2531 provides that the forfeiture of the vehicle, vessel, or aircraft shall not be effected if it is established that the owner thereof or his agent in charge of the means of conveyance has no knowledge of or participation in the unlawful act.

Recommended Practice 17

P	Unless they are likely to deteriorate quickly or it would, due to their nature, be impracticable for the Customs to store them, seized or detained goods should not be sold or otherwise disposed of by the Customs before they have been definitively condemned as forfeited or confiscated or have been abandoned to the Revenue.
N	Section 2601 (d) provides that seized property shall be disposed of after liability to sale shall have been established by proper administrative or judicial proceedings in conformity with the provision of the Code. Exceptions are certain goods provided for under Section 2607.

Detention of persons

Standard 18

P	National legislation shall specify the powers of the Customs in connection with detention of persons and shall lay down the conditions therefore, in particular the period after which detention becomes subject to a review by a judicial authority.
N	The TCCP clothes Customs officers with police powers including power to arrest. The period within which Customs may detain arrested persons and charged them before a fiscal is set under the penal laws.

Administrative settlement of Customs offences

Recommended Practice 20

P	Where during clearance of the goods a Customs offence has been discovered which is regarded as of minor importance; it should be possible for the offence to be settled by the Customs office which discovers it.
N	The TCCP provides that the offense be above a threshold for the goods to be liable for seizure. A less than 10% discrepancy between the declaration and the actual findings would entail only the payment of additional duties and taxes. A 10-19% discrepancy is subject to a one time fine while a 20-29% discrepancy is punished with a two times fine. It is only when the discrepancy is 30% or more and when the goods are not declared that there is prima facie evidence of fraud making the shipment liable for seizure and the person liable for criminal prosecution. All of the above action is managed by the discovering unit.

Standard 22

P	National legislation shall lay down the penalties applicable to each category of Customs offence that can be dealt with by administrative settlement and shall designate the Customs offices competent to apply them.
N	<ul style="list-style-type: none">• Prohibited imports are not allowable for the administrative remedies.• Regulated goods under seizure may be extended these remedies for as long as the required clearances, permits or authorizations are first obtained.• Collectors of Customs decide on seizure cases. However, any decision unfavorable to the government requires automatic review by higher authorities CMO 4-94 - Schedule of Fines for Admin Settlement• CMO 34-2002 - Guidelines for Imposition of Fines

Standard 23

P	The severity or the amount of any penalties applied in an administrative settlement of a Customs offence shall depend upon the seriousness or importance of the Customs offence committed and the record of the person concerned in his dealings with the Customs.
N	<ul style="list-style-type: none">• Surcharges under Section 2503 of the TCCP (none vs. 1x vs. 2x) depends on the percentage discrepancy.• All undeclared items are liable for seizure and when these undeclared items as a percentage of the total shipment in terms (volume/ value) is the majority, the whole shipment is liable for seizure as well.

Standard 24

P	Where untrue particulars are furnished in a Goods declaration and the declarant can show that all reasonable steps had been taken to provide accurate and correct information, the Customs shall take that factor into account in considering the imposition of any penalty.
N	This is consistent with national legislation and practice but the determination of this is the subject matter of the seizure proceedings (if goods are issued WSD) or during appeal for the non-imposition of penalty.

Standard 26

P	Goods that have been seized or detained, or the proceeds from the sale of such goods after deduction of any duties and taxes and all other charges and expenses incurred, shall be: <ul style="list-style-type: none">• turned over to the person entitled to receive them as soon as possible after the Customs offence has been definitively settled; or• when this is not possible, held at their disposal for a specified period,• provided that the goods have neither been condemned as forfeited or confiscated nor abandoned to the Revenue as a result of a settlement.
N	While any Customs administration makes this as an objective, legislation is silent except for the provision of standard times for processing claims. Section 2606, TCCP

Right of Appeal

Standard 27

P	Any person implicated in a Customs offence that is the subject of an administrative settlement shall have the right of appeal to an authority independent of the Customs unless he has chosen to accept the compromise settlement.
N	<ul style="list-style-type: none">• Decisions of the Customs maybe appealed to the Secretary of Finance and to then to the Court of Tax Appeals.• Section. 2402, TCCP• RA 9282 – Expanded Jurisdiction of CTA

Specific Annex J: Special Procedures

Background

There are many tourist spots in the country that can be opened to direct calls/visits by foreigners traveling on their private yachts and aircrafts. National legislation must provide for the handling of these modes of transport by travelers.

Strategy

- Accept Annex J1
- Accede to the Customs Convention on ATA CARNET as well as the Istanbul Convention to facilitate as well as secure the cross border flow of goods such as pleasure yachts and aircrafts. Another is the New Convention on Pleasure Yachts and aircraft.

- Pending accession, the international temporary admission forms such as the Carnet de Passage de Douanne prescribed in the conventions may already be recognized and use for the clearance of pleasure yacht and aircraft
- Enter reservation on Recommended Practice s 9 and 14
- Develop systems and issue regulations for 15, 23, 27, 29, 31, 37 and 37
- Amend law for 16 and 17

Chapter 1: Travellers

Field of application

Standard 2

P	The Customs facilities provided for in this Chapter shall apply to travellers irrespective of their citizenship/nationality.
N	Legislation is silent but observed in practice. This principle should be clearly provided for in legislation thru a general announcement.
C-3	
S-4	

Standard 3

P	The Customs shall designate the Customs offices at which Customs formalities relating to travelers may be accomplished. In determining the competence and location of these offices, and their hours of business, the Customs shall take into account in particular the geographical situation and existing volumes of passenger traffic.
N	Section 701 of the TCCP empowers the President on recommendation of the Commissioner of Customs and the Minister of Finance to open international ports of entries through which travelers may go through for customs formalities. In addition, Section 606 empowers the President to subject premises to the jurisdiction of the Bureau of Customs.

Recommended Practice 6

P	The dual-channel system should be used for the Customs control of travelers and the clearance of goods carried by them and, where appropriate, their means of transport for private use.
N	Customs has a regulation and actually being implemented for greenlane channel (as against the regular of red lane).

Recommended Practice 7

P	Regardless of the mode of transport used, a separate list of travelers or of their accompanying baggage should not be required for Customs purposes.
G	The “separate lists” referred in this Recommended Practice refers to a Customs form for passenger manifests as against the passenger manifest regularly prepared by transportation companies or carriers A separate Customs manifests is considered to be of questionable value and the preparation and lodgement of which would impose an unreasonable administrative burden on airlines, shipping companies, etc. Therefore, this Recommended Practice provides that if required, a passenger list

	from the carrier's normal records should be accepted.
N	Passenger Manifest and Crew List are still being required by BOC However, no separate customs form is prescribed since a printout or file transfer from the transportation company's system would suffice. BOC has been obtaining passenger manifest from SITA.

Recommended Practice 8

P	The Customs, in co-operation with other agencies and the trade, should seek to use internationally standardized advance passenger information, where available, in order to facilitate the Customs control of travelers and the clearance of goods carried by them.
N	BOC has obtained passenger and goods manifest with SITA.

Standard 10

P	Personal searches of travelers for the purposes of Customs control shall be carried out only in exceptional cases and when there are reasonable grounds to suspect smuggling or other offences.
N	In addition to the dual processing of passenger, personal or body searches are done only on information or when there is compelling reason for doing so.

Standard 11

P	Goods carried by travelers shall be stored or kept, subject to the conditions prescribed by the Customs, pending clearance under the appropriate Customs procedure, re-exportation or other disposal in accordance with national legislation in the following cases: <ul style="list-style-type: none"> • At the traveler's request; • When the goods concerned cannot be cleared immediately; or • Where the other provisions of this Chapter do not apply to such goods.
N	At the airport, there is a storage facility called "in-bond" that responds to the situations described in this Standard.

Standard 12

P	Unaccompanied baggage (i.e. baggage arriving or leaving before or after the traveller) shall be cleared under the procedure applicable to accompanied baggage or under another simplified Customs procedure.
N	Unaccompanied baggage (as against mishandled baggage that is checked in by the passenger) is issued by the transportation company with an airway bill or bill of lading. It is cleared under a different procedure from accompanied baggage (which only needs a baggage declaration). Provided the contents are personal belongings and effects normally accompanying travelers, a simplified procedure using informal entry is observed.

Standard 13

P	Any authorized person shall be allowed to present unaccompanied baggage for clearance on behalf of the traveler.
N	Section 1301 of the Customs Code as amended by RA 9280 allows the use of third parties for the clearance of a traveller's unaccompanied goods.

Entry**Standard 18**

P	Returning residents shall be permitted to re-import free of import duties and taxes personal effects and their means of transport for private use which they took with them at the time of their departure from the country and which were in free circulation in that country.
N	Resident must however take measures to present to Customs on exportation to facilitate re-importation.

Standard 19

P	The Customs shall not require a Customs document or security for the temporary admission of personal effects of non-residents unless: <ul style="list-style-type: none"> • they exceed, in value or quantity, the limits laid down in national legislation; or • they are deemed by the Customs to be a risk to the Revenue.
N	For accompanied goods of travelers, no document other than the passenger declaration on arrival is required.

Standard 20

P	In addition to clothing, toilet articles and other articles obviously of a personal nature, the following shall in particular be considered to be non-residents' personal effects: <ul style="list-style-type: none"> • Personal jewellery; • Still and motion picture cameras together with a reasonable supply of films, tapes and accessories therefore; • Portable slide or film projectors and accessories therefore together with a reasonable quantity of slides or films; • Binoculars; • Portable musical instruments; • Portable sound reproduction devices including tape recorders, compact disc players and dictating machines with tapes, records and discs; • Portable radio receivers; • Cellular or mobile telephones; • Portable television sets; • Portable typewriters; • Portable personal computers and accessories; • Portable calculators; • Baby carriages and strollers; • Wheelchairs for invalids; • Sporting equipment.
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N	Section 105-G is broad enough to cover the above enumerated items.
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Standard 21

P	Where it is necessary to lodge a temporary admission declaration for non-residents' personal effects, the time limit for temporary admission shall be fixed by reference to the length of the traveller's stay in the country, provided that any limit laid down in national legislation is not exceeded.
N	Section 105-G provides for a 3-months period for re-exportation and subject to guarantees.

Standard 22

P	At the request of the traveller, and for reasons deemed valid by the Customs, the latter shall extend the period of temporary admission initially fixed for a non-resident's personal effects, provided that any limit laid down in national legislation is not exceeded.
N	Extendible by 3-months

Standard 23

P	Non-residents shall be granted temporary admission in respect of their means of transport for private use.
N	Yachts and planes of private persons are placed under guards while in a place subject to customs control and placed under bond if use outside.

Standard 30

P	Any replacement parts required for the repair of a means of transport for private use temporarily in the country shall be granted temporary admission.
N	Conditionally Free

Re-exportation

Standard 32

P	The Customs shall not require the re-exportation of non-residents' means of transport for private use or personal effects which have been seriously damaged or destroyed through accident or force majeure.
N	May be (1) expressly abandoned to be disposed of in accordance with law (2) entered for home use with the damage considered for valuation purposes.

Departure

Standard 33

P	The Customs formalities applicable to departing travelers shall be as simple as possible.
N	Customs essentially just observe the scanning machines operated by the airport

	authorities and only searches the baggage if there are compelling reasons to do so.
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Standard 34

P	Travelers shall be permitted to export goods for commercial purposes, subject to compliance with the necessary formalities and payment of any export duties and taxes chargeable.
N	There are no restrictions for travellers to export but they need to comply with export procedures like residents.

Standard 35

P	At the request of residents leaving the country, the Customs shall take identification measures for certain articles when it will facilitate the re-importation free of duties and taxes.
N	At the request of a departing traveler who is taking out certain personal effects that may be questioned upon return such as jewelries, Customs may inspect the goods and issue a certificate of identification.

Standard 36

P	Only in exceptional cases shall the Customs require a temporary exportation document for the personal effects and means of transport for private use of residents leaving the country.
N	Personal effects of departing travelers are not required to be declared with Customs. But for the benefit of the traveler who may have difficulty later convincing customs officers that the goods accompanying him on return are the same ones brought out, Customs will advise him to get certificate of identification but not temporary export.

Transit passengers

Standard 38

P	Transit passengers who do not leave the transit area shall not be required to pass through any Customs control. However, the Customs shall be allowed to maintain general surveillance of transit areas and to take any action necessary when a Customs offence is suspected.
N	This is being observed at the country's airports but there is no legislation spelling this out.

Chapter 2: Postal traffic

Principles

Standard 2

P	National legislation shall specify the respective responsibilities and obligations of the Customs and of the postal service in connection with the Customs treatment of postal items.
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N	There is a MOA between Customs and Post but this needs amendment. The 1973 MOA was made between the Bureau of Customs and the Bureau of Post which is now the Philippine Postal Corporation which is a different legal entity.
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Clearance of postal items

b. Production to the Customs

Standard 6

P	The Customs shall designate to the postal service the postal items which shall be produced to them for the purposes of Customs control and the methods of production of these items.
N	Under the Customs and Postal Service Agreement, parcel posts are segregated from mail at a designated area. Customs officers designate those to be examined from those that may already be cleared by the postal authorities. Upon inspection and assessment by Customs, the parcels are forwarded to the postal stations concerned where the goods are released upon payment of the assessment.

Standard 7

P	The Customs shall not require postal items to be produced to them at exportation for the purposes of Customs control, unless they contain: <ul style="list-style-type: none"> • goods the exportation of which must be certified; • goods which are subject to export prohibitions or restrictions or to export duties and taxes; • goods having a value exceeding an amount specified in national legislation; or • goods which are selected for Customs control on a selective or random basis.
N	Customs - Only the required documents are presented and its up to Customs to require physical presentation of the export goods.

Recommended Practice 8

P	The Customs should not, as a general rule, require the following categories of imported postal items to be produced to them: <ol style="list-style-type: none"> 1. postcards and letters containing personal messages only; 2. literature for the blind; 3. printed papers not subject to import duties and taxes.
N	As with Standard 6, Customs selects the ones subject for verification.

Chapter 3: Means of transport for commercial use

Chapter 3 of Annex J deals with the temporary admission procedures of means for commercial transport of goods.

Temporary admission means the Customs procedure under which vehicles, vessels or aircrafts may be introduced into a Customs territory conditionally relieved from payment of import duties and taxes.

The archipelagic geography of the country extremely limits the situations for operators of means of transport to avail of temporary admissions unlike in countries with common land borders where means of

transport under multilateral or bilateral arrangements may move within the territory of countries other than the country of registration of the means of transport.

In the case of tourism or exhibition ships calling at different ports in the country, the usual control mechanism is for customs officers to be assigned on board for the duration of the transportations stay in country.

Temporary admission of means of transport for commercial use

Recommended Practice 3

P	Means of transport for commercial use, whether loaded or not, should be allowed to be brought temporarily into a Customs territory conditionally relieved from payment of import duties and taxes, provided that such means of transport for commercial use are not used for internal transport in the Customs territory of the country of temporary admission. They must be intended for re-exportation without having undergone any change except normal depreciation due to their use, normal consumption of lubricants and fuel and necessary repairs.
N	Section 100 of the TCCP states that only importations are subject to duty while Section 107 of then NIRC subjects importation to VAT. Modes of transport are not considered importation and therefore neither subject to duty or VAT.

Standard 4

P	The Customs shall require security or a temporary admission document for means of transport for commercial use duly registered abroad only when they consider it essential for the purposes of Customs control.
N	Means of transport, not being importations nor subject to duty/ tax, are not subject to security. However, when there is a risk of these becoming importations as when they have to stay in the country for valid reasons beyond the normal duration for transporting goods as when these have to undergo emergency repairs or work in a place outside of customs control, then the Customs authority may impose a security required on conditionally free imports for repairs or processing.

Standard 5

P	Where the Customs fix a time limit for the re-exportation of means of transport for commercial use, they shall take into account all the circumstances of the transport operations intended.
N	There is no legislation covering security for means of transport. Its when they become temporary importation that they are required security which under existing law have fixed period for re-export but which in practice may be granted extension.

Recommended Practice 6

P	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend any period initially fixed.
N	When means of transport become temporary importation, they are required security which under existing law have fixed period for re-export but which in practice may be granted extension.

Temporary admission of parts and equipment

Recommended Practice 7

P	Special equipment for the loading, unloading, handling and protection of cargo, whether or not it is capable of being used separately from the means of transport for commercial use, which is imported with the means of transport for commercial use and is intended to be re-exported therewith, should be allowed to be brought temporarily into a Customs territory conditionally relieved from payment of import duties and taxes.
N	Ship's gears are considered part of the means of transport and are not considered articles of importation under Section 100 of the TCCP and Section 107 of the NIRC.

Recommended Practice 8

P	Parts and equipment which are to be used, in the course of repair or maintenance, as replacements for parts and equipment incorporated in or used on a means of transport for commercial use already temporarily imported in a Customs territory, should be allowed to be brought temporarily into that territory conditionally relieved from payment of import duties and taxes.
N	Section 105 (w) of the TCCP

Arrival

Standard 9

P	When a declaration of arrival is required to be lodged with the Customs on arrival of means of transport for commercial use, the particulars required to be given thereon shall be limited to the minimum necessary to ensure compliance with Customs law.
N	<ul style="list-style-type: none">• The declaration of arrival for aircraft engaged in foreign trade is the General Declaration (a document governed by ICAO). Section 1105 of the TCCP lists the data to be provided in the General Declaration.• For maritime transport, the Customs Code does not have a general declaration. However, a comparison of the documents required for submission on arrival and the data elements thereof (manifest, storage plan, store list, crew list and passenger list) shows these to be practically identical. Notwithstanding, in practice, a General Declaration is required of maritime vessels maybe to align the procedures for sea and air transport.• A perusal of the data required per the Customs Code show that all these are relevant for proper Customs Control.

Departure

Standard 15

P	Means of transport for commercial use shall be permitted to depart from the Customs territory through a Customs office other than that through which they arrived.
N	This standard is allowed for as long as entrance and clearance formalities is observed for each port of call and that calls are only made at designated ports of entry.

Chapter 4: Stores

Strategy

Accept this Annex and issue CMOs on Ship Stores providing for these except for Recommended Practice 4 which is not applicable.

Stores on board arriving vessels, aircraft or trains

a. Exemption from import duties and taxes

Standard 3

P	Stores which are carried in a vessel or aircraft arriving in the Customs territory shall be exempted from import duties and taxes provided that they remain on board.
N	Section 100 of the TCCP

Standard 5

P	Stores for consumption necessary for the operation and maintenance of vessels, aircraft and trains which are on board these means of transport arriving in the Customs territory shall be exempted from import duties and taxes provided that they remain on board while these means of transport are in the Customs territory.
N	Stores on International Carriers are considered not entered into the customs territory.

Supply of stores exempted from duties and taxes

Standard 15

P	Vessels and aircraft which depart for an ultimate foreign destination shall be entitled to take on board, exempted from duties and taxes: a. stores in such quantities as the Customs deem reasonable having regard to the number of the passengers and the crew, to the length of the voyage or flight and to any quantities of such stores already on board; and b. stores for consumption necessary for their operation and maintenance, in such quantities as are deemed reasonable for operation and maintenance during the voyage or flight having regard also to any quantities of such stores already on board.
N	There are rulings recognizing the duty and tax free treatment. Provided proper procedures are observed, withdrawal from bonded warehouses free is allowed and those already paid may be refunded under drawback.

Standard 16

P	Replenishment of stores exempted from duties and taxes shall be allowed for vessels and aircraft which have arrived in the Customs territory and which need to replenish their stores for the journey to their final destination in the Customs territory.
N	There are rulings recognizing the duty and tax free treatment. Provided proper procedures are observed, withdrawal from bonded warehouses free is allowed and those already paid may be refunded under drawback.

Standard 17

P	The Customs shall allow stores for consumption supplied to vessels and aircraft during their stay in the Customs territory to be issued under the same conditions as are applicable in this Chapter to stores for consumption held on board arriving vessels and aircraft.
N	There are rulings recognizing the duty and tax free treatment. Provided proper procedures are observed, withdrawal from bonded warehouses free from duties and taxes is allowed and those already paid may be refunded under drawback.

Chapter 5: Relief Consignments

Recommendations

Accession with reservation on R-4 (In general we observe this but there may be health and quarantine restrictions and there used to be some political restrictions that was observed. Need to enter reservation) Issuance of Joint Order among DSWD, DOF and BOC

- mandating the priority treatment of relief goods during the period of the emergency
- calling for the observance of the standards and recommended practices and
- putting in place the enabling systems such as release under simplified goods declaration and advance clearance
- institution of controls to prevent abuse such as:
 - Accreditation of Relief Organizations
 - Duration of the Period of the Emergency within which the special procedures maybe availed
 - Procedure and Controls in the transfer from Customs and DSWD
 - Designation of Warehouses where the goods are to be transferred and processed for distribution

Field of Application

Standard 3

P	<p>In the case of relief consignments the Customs shall provide for :</p> <ul style="list-style-type: none"> • lodging of a simplified Goods declaration or of a provisional or incomplete Goods declaration subject to completion of the declaration within a specified period; • lodging and registering or checking of the Goods declaration and supporting documents prior to the arrival of the goods, and their release upon arrival; • clearance outside the designated hours of business or away from Customs offices and the waiver of any charges in this respect; and • examination and/or sampling of goods only in exceptional circumstances.
C-3,4	<p>There is no legislation providing for goods release based on simplified goods declaration which can also be lodged and processed ahead of goods arrival. • There is nothing that expressly prohibits these.</p> <p>If BOC allows, the System for delivery has either the FIP module or the Informal Entry as the support system</p>

Recommended Practice 5

P	In the case of relief consignments any economic export prohibition or restriction and any export duties or taxes otherwise payable should be waived.
N	At present there is no export duty. Should in future certain goods be subject to export duty, then legislation must provide exemption when exported as relief goods.

Recommended Practice 6

P	Relief consignments received as gifts by approved organizations for use by or under the control of such organizations, or for distribution free of charge by them or under their control, should be admitted free of import duties and taxes and free of economic import prohibitions or restrictions.
N	Exempted under customs and tax codes

Specific Annex K: Origin

Chapter 1: Rules of origin

Coverage

Country of origin of goods. – the country in which the goods have been produced or manufactured, according to the criteria laid down for the purposes of application of the Customs tariff, of quantitative restrictions or of any other measure related to trade;

Rules of origin. – the specific provisions, developed from principles established by national legislation or international agreements ("origin criteria"), applied by a country to determine the origin of goods;

Substantial transformation criterion. – the criterion according to which origin is determined by regarding as the country of origin the country in which the last substantial manufacturing or processing, deemed sufficient to give the commodity its essential character, has been carried out.

Areas of Application of Rules of Origin to discriminate between exporting countries in matters of

- quotas
- preferential tariffs
- anti-dumping actions
- countervailing duty (charged to counter export subsidies)
- compile trade statistics,
- "made in ..." labels attached to products

Overall Strategy

Accept Specific Annex K completely since national legislation is already fully compliant with RKC as explained below:

- The Philippines is a signatory to the Agreement Establishing the WTO which together with the Supplemental Agreements have been ratified by the President and concurred to by the Senate. One of these agreements which now form part of the law of the land is the WTO Rules of Origin. The two main principles governing the origin rules under the WTO are wholly produced or obtained goods and substantial transformation. These are likewise the two main principles underlying the RKC origin rules.

- The country being a member of ASEAN is a signatory to both AFTA and the ASEAN-China Free Trade Area (ACFTA). As such it is bound by the rules of origin under both agreements which, among others, provide alternative criteria on substantial transformation including Product Specific Rules. The WTO allows certain “departures” from the general rules for economic and regional groupings such as the ASEAN.
- The Rules of Origin for the CEPT Scheme of AFTA together with the Operational Certification Procedures already reflect all the standards and recommended practices under the RKC rules of origin. This, plus the fact that the RKC Rules of Origin are aligned with the WTO rules are the basis for concluding that Philippine national legislation on rules of origin are compliant with the RKC.

Principle

Standard 1

P	The rules of origin necessary for the implementation of the measures which the Customs are responsible for applying both at importation and at exportation shall be laid down in accordance with the provisions of this Chapter and, insofar as applicable, by the provisions in the General Annex.
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Rules of Origin

Standard 2

P	<p>Goods produced wholly in a given country shall be taken as originating in that country.</p> <p>The following only shall be taken to be produced wholly in a given country:</p> <ul style="list-style-type: none"> • mineral products extracted from its soil, from its territorial waters or from its sea-bed; • vegetable products harvested or gathered in that country; • live animals born and raised in that country; • products obtained from live animals in that country; • products obtained from hunting or fishing conducted in that country; • products obtained by maritime fishing and other products taken from the sea by a vessel of that country; • products obtained aboard a factory ship of that country solely from products of the kind covered by paragraph (f) above; • products extracted from marine soil or subsoil outside that country's territorial waters, provided that the country has sole rights to work that soil or subsoil; • scrap and waste from manufacturing and processing operations, and used articles, collected in that country and fit only for the recovery of raw materials; • goods produced in that country solely from the products referred to in paragraphs (a) to (i) above.
N	Rule 2 of CEPT Scheme for AFTA

Recommended Practice 3

P	Where two or more countries have taken part in the production of the goods, the origin of the goods should be determined according to the substantial transformation criterion.
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Recommended Practice 4

P	In applying the substantial transformation criterion, use should be made of the International Convention on the Harmonized Commodity Description and Coding System.
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Recommended Practice 5

P	<p>Where the substantial transformation criterion is expressed in terms of the ad valorem percentage rule, the values to be taken into consideration should be:</p> <ul style="list-style-type: none">• for the materials imported, the dutiable value at importation or, in the case of materials of undetermined origin, the first ascertainable price paid for them in the territory of the country in which manufacture took place• for the goods produced, either the ex-works price or the price at exportation, according to the provisions of national legislation.
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Recommended Practice 6

P	<p>Operations which do not contribute or which contribute to only a small extent to the essential characteristics or properties of the goods, and in particular operations confined to one or more of those listed below, should not be regarded as constituting substantial manufacturing or processing:</p> <ul style="list-style-type: none">• operations necessary for the preservation of goods during transportation or storage;• operations to improve the packaging or the marketable quality of the goods or to prepare them for shipment, such as breaking bulk, grouping of packages, sorting and grading, repacking;• simple assembly operations;• mixing of goods of different origin, provided that the characteristics of the resulting product are not essentially different from the characteristics of the goods which have been mixed.• special cases of qualification for origin
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Special cases of qualification for origin

Recommended Practice 7

P	Accessories, spare parts and tools for use with a machine, appliance, apparatus or vehicle should be deemed to have the same origin as the machine, appliance, apparatus or vehicle, provided that they are imported and normally sold therewith and correspond, in kind and number, to the normal equipment thereof.
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Recommended Practice 8

P	An unassembled or disassembled article which is imported in more than one consignment because it is not feasible, for transport or production reasons, to import it in a single consignment should, if the importer so requests, be treated as one article for the purpose of determining origin.
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Recommended Practice 9

P	For the purpose of determining origin, packings should be deemed to have the same origin as the goods they contain unless the national legislation of the country of importation requires them to be declared separately for tariff purposes, in which case their origin should be determined separately from that of the goods.
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Recommended Practice 10

P	For the purpose of determining the origin of goods, where packings are deemed to have the same origin as the goods, account should be taken, in particular where a percentage method is applied, only of packings in which the goods are ordinarily sold by retail.
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Standard 11

P	For the purpose of determining the origin of goods, no account shall be taken of the origin of the energy, plant, machinery and tools used in the manufacturing or processing of the goods.
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Direct transport rule

Recommended Practice 12

P	Where provisions requiring the direct transport of goods from the country of origin are laid down, derogations therefrom should be allowed, in particular for geographical reasons (for example, in the case of landlocked countries) and in the case of goods which remain under Customs control in third countries (for example, in the case of goods displayed at fairs or exhibitions or placed in Customs warehouses)
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Information concerning rules of origin

Standard 13

P	Changes in the rules of origin or in the procedures for their application shall enter into force only after sufficient notice has been given to enable the interested persons, both in export markets and in supplying countries, to take account of the new provisions.
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Chapter 2: Documentary evidence of origin

Requirement of documentary evidence of origin

Recommended Practice 5

P	Documentary evidence from the competent authorities of the country of origin should be required only in cases where the Customs of the country of importation have reason to suspect fraud.
N	A-III of CMO 27-2004

Languages to be used

Recommended Practice 7

P	Certificate of origin forms should be printed in the language(s) selected by the country of exportation and, if these languages are neither English nor French, also in English or French
N	English is an official language and used in the COs

Authorities and other bodies empowered to issue certificates of origin

Standard 9

P	Contracting Parties accepting this Chapter shall indicate, either in their notification of acceptance or subsequently, the authorities or bodies empowered to issue certificates of origin.
N	5-A-III of CMO 27-2004

Recommended Practice 11

P	Authorities or bodies empowered to issue certificates of origin should retain for not less than two years the applications for, or control copies of, the certificates of origin issued by them.
N	EO 301 dated 26 July 1987 as Circularized under Customs Unnumbered Memo dated January 12, 2005 provides keeping of public records for at least 5 years (2 years in active and 3 years archive)

Sanctions

Standard 13

P	Provision shall be made for sanctions against any person who prepares, or causes to be prepared, a document containing false information with a view to obtaining documentary evidence of origin.
N	Rule 21 on Operational Certification Procedures of CEPT-AFTA on Action Against Fraudulent Acts provide that each member shall be responsible for providing legal sanctions. This offense is among those already punishable under the Customs Code and penal laws

Chapter 3: Control of Documentary evidence of origin

Reciprocity

Standard 2

P	The competent authority of the Contracting Party which has received a request for control need not comply with it if the competent authority of the requesting Contracting Party would be unable to furnish that assistance if the positions were reversed.
N	Rule 16 of the Operational Certification Procedures of the CEPT AFTA provides non-implementation of preferential rate until action by the exporting country's competent

	authority on the request of verification
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Requests for control

Recommended Practice 3

P	The Customs administration of a Contracting Party which has accepted this Chapter may request the competent authority of a Contracting Party in whose territory documentary evidence of origin has been established to carry out control of such evidence : <ul style="list-style-type: none"> a. where there are reasonable grounds to doubt the authenticity of the document; b. where there are reasonable grounds to doubt the accuracy of the particulars given therein; c. on a random basis.
N	Operational Procedures and CMO 27-2004

Standard 4

P	Requests for control on a random basis, as provided for in Recommended Practice 3 (c) above, shall be identified as such and be kept to the minimum necessary to ensure adequate control.
N	In Operational Procedures. But would be advisable to include in the CMO 27-2004 as well

Standard 5

P	Requests for control shall : <ul style="list-style-type: none"> a. specify the reasons for the requesting Customs administration's doubts about the authenticity of the document produced or the accuracy of the particulars given therein, unless the control is requested on a random basis; b. specify, where appropriate, the rules of origin applicable to the goods in the country of importation and any additional information requested by that country; c. be accompanied by the documentary evidence of origin to be checked, or a photocopy thereof, and where appropriate any other documents such as invoices, correspondence, etc. that might facilitate control.
N	Provided for in OCP and CMO 27-2004

Standard 6

P	Any competent authority receiving a request for control from a Contracting Party having accepted this Chapter shall reply to the request after having carried out the necessary controls itself or having had the necessary investigations made by other administrative authorities or by bodies authorized for the purpose.
N	In OCP. It is advisable to elaborate in CMO particularly our own procedure for responding to request

Standard 7

P	An authority receiving a request for control shall answer the questions put by the requesting Customs administration and furnish any other information it may consider relevant.
N	In OCP. It is advisable to elaborate in CMO particularly our own procedure for responding to request

Standard 8

P	Replies to requests for control shall be furnished within a prescribed period not exceeding six months. If the authority receiving the request cannot reply within six months, it shall so inform the requesting Customs administration.
N	OCP provides for three (3) but we should include in our CMO as well

Standard 9

P	Requests for control shall be made within a prescribed period which, except in special circumstances, should not exceed one year, commencing with the date on which the document was produced to the Customs office of the Contracting Party making the request.
N	CMO 27-2004 provides for 6 months

Release of the goods**Standard 10**

P	A request for control shall not prevent the release of the goods, provided that they are not held to be subject to import prohibitions or restrictions and there is no suspicion of fraud.
N	In OCP and CMO. Difference in duties and taxes payable between with and without preference to be covered by a security

Miscellaneous provisions**Standard 11**

P	Any information communicated in accordance with the provisions of this Chapter shall be treated as confidential and used for Customs purposes only.
N	In OCP but should be included in CMO as well

Standard 12

P	The documents needed for control of documentary evidence of origin issued by the competent authorities or authorized bodies shall be retained by them for an adequate period which should not be less than two years following the date on which the documentary evidence was issued.
N	Philippine law requires retention for 5 years (2 years active and 3 years archived)

Standard 13

P	The Contracting Parties that accept this Chapter shall specify the authorities which are competent to receive requests for control and communicate their address to the Secretary General of the Council who will transmit such information to the other Contracting Parties having accepted this Chapter.
N	In OCP but advisable to issue CMOs as well.

Specific Annex Gap Analysis: Non-Compliant Provisions

Specific Annex Gap Analysis: Non-Compliant Provisions: LEGEND

LEGEND:	
P	Provision of RKC
G	RKC Guidelines
N	Notes on Compliance
C	Compliance Gap
1	Not allowed under current legislation
1a	Code and Laws are inconsistent
1b	Orders and Circulars are inconsistent
2	Allowed under certain conditions not those contemplated under RKC
3	Legislation is Silent
4	Manageable under Asycuda or TWM
5	Not manageable under Asycuda or TWM
S	Strategies for Compliance
1	Amendment Law or Pass New Law
2	Issue Department Order or a CAO to amend existing ones
3	Develop implementing System and/or reflect in the manual of operations which must be issued as a regulation
4	Particularly highlight in the proposed executive order on the general announcement of RKC accession to clearly demonstrate compliance
5	Issue Reservation

- **Specific Annex A: Arrival of goods in a customs territory**
 - **Chapter 1: Formalities prior to the lodgement of the Goods Declaration**
 - Production of goods to the Customs
 - a. Documentation
 - Standard 8
 - Recommended Practice 9
 - Recommended Practice 10
 - Recommended Practice 12
 - **Chapter 2: Temporary storage of goods**
 - Documentation
 - Recommended Practice 5
 - Authorized operations
 - Standard 7
 - Recommended Practice 8
 - Duration of temporary storage
 - Recommended Practice 10
- **Specific Annex B: Importation**
 - **Chapter 3: Relief from import duties and taxes**
 - Field of application
 - Recommended Practice 6
 - Recommended Practice 7
- **Specific Annex C: Exportation**
 - Strategy

- Duration of stay of the goods in the Customs territory
 - Recommended Practice 5
 - Recommended Practice 6
 - Payment of drawback
 - Recommended Practice 8
 - Recommended Practice 9
 - Recommended Practice 10
 - **Chapter 4: Processing of goods for home use**
 - **Specific Annex G: Temporary Admission**
 - Coverage
 - Field of application
 - Standard 4
 - Recommended Practice 5
 - Standard 6
 - Formalities prior to the granting of temporary admission
 - Recommended Practice 9
 - Recommended Practice 10
 - Identification measures
 - Standard 11
 - Recommended Practice 12
 - Time limit for re-exportation
 - Recommended Practice 14
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 - Recommended Practice 23
 - **Specific Annex H: Offences**
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 - Coverage
 - Overall Strategy
 - Investigation and establishment of Customs offences
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 - Procedure to be followed when a Customs offence is discovered
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- Entry
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 - Standard 24
 - Standard 25
 - Recommended Practice 26
 - Recommended Practice 27
 - Standard 28
 - Standard 29
- Re-exportation
 - Standard 31
- Departure
 - Recommended Practice 37
- Information concerning the Customs facilities
 - Recommended Practice 39
- **Chapter 2: Postal traffic**
 - Clearance of postal items
 - Standard 3
 - a. Customs status of goods
 - Standard 4
 - Standard 5
 - c. Clearance against forms CN22 or CN23 or against a Goods declaration
 - Standard 9
 - Postal items in transit
 - Standard 10
 - Collection of duties and taxes
 - Standard 11
- **Chapter 3: Means of transport for commercial use**
 - Principles
 - Recommended Practice 2
 - Arrival
 - Standard 10
 - Standard 11
 - Subsequent calls in the Customs territory
 - Standard 12
 - Departure
 - Standard 13
 - Recommended Practice 14
- **Chapter 4: Stores**
 - Strategy
 - Principles
 - Recommended Practice 2
 - b. Documentation
 - Standard 6
 - Recommended Practice 7
 - Recommended Practice 8
 - Standard 9
 - c. Issue of stores for consumption
 - Standard 10
 - Recommended Practice 11
 - Recommended Practice 12
 - d. Customs control
 - Standard 13
 - Standard 14
 - Departure

- Recommended Practice 18
 - Standard 19
 - Other disposal of stores
 - Standard 20
 - **Chapter 5: Relief Consignments**
 - Recommendations
 - Principles
 - Standard 1
 - Standard 2
 - Standard 3
 - Field of Application
 - Recommended Practice 4
 - Recommended Practice 5
 - Recommended Practice 6
- **Specific Annex K: Origin**
 - **Chapter 2: Documentary evidence of origin**
 - Requirement of documentary evidence of origin
 - Recommended Practice 2
 - Recommended Practice 3
 - Recommended Practice 4
 - Applications and form of the various types of documentary evidence of origin
 - a. Certificate of origin
 - Form and content
 - Recommended Practice 6
 - Languages to be used
 - Recommended Practice 8
 - Authorities and other bodies empowered to issue certificates of origin
 - Recommended Practice 10
 - b. Documentary evidence other than certificates of origin
 - Recommended Practice 12

Specific Annex A: Arrival of goods in a customs territory

Accept Annex A but enter reservations on

1. Recommended Practice 12 Chapter 1 since TCCP requires documents to be submitted in the official language; and
2. Recommended Practice 10 of Chapter 2 since TCCP does not provide for extension of the period of temporary storage.

All other Standards and Recommended Practices must be reflected in a Manual of Operations. Customs does not have one now and this process of acceding to the RKC is a golden opportunity to make one.

Chapter 1: Formalities prior to the lodgement of the Goods Declaration

Production of goods to the Customs

- a. Documentation

Standard 8

P	Where the Customs require documentation in respect of the production of the goods to the Customs, this shall not be required to contain more than the information necessary to identify the goods and the means of transport.
N	The guidelines to this recommended practice provides that the documents required for the production of goods should contain no more than the data listed which does not include the consignee. However for purposes of risk analysis and advance clearance which are likewise recommended best practices; consignee is a very important data element. Shipper is another. Section 1005 of the TCCP provides that manifest shall include the port of departure and the port of delivery with the marks, numbers, quantity and description of the packages and the names of the consignees thereof. These data elements are all in the ship's regular manifest and all are provided by the shipper per the pro-forma bill of lading or airway bill.
C-1	
S-5	Enter reservation and to require consignee and shipper among the data elements in the manifest.

Recommended Practice 9

P	The Customs should limit their information requirements to that available in carriers' normal documentation and should base their requirements on those set out in the relevant international transport agreements.
N	same as in Recommended Practice 8
C-1	
S-5	

Recommended Practice 10

P	The Customs should normally accept the cargo declaration as the only required documentation for the production of the goods.
N	Section 1004 requires several other documents on top of the cargo manifest such as cargo storage plan, store list, passenger list, store list and one copy of the original duplicate of bills of lading fully accomplished
C-1	
S-5	

Recommended Practice 12

P	Where the documents produced to the Customs are made out in a language which is not specified for this purpose or in a language which is not a language of the country into which the goods are introduced; a translation of the particulars given in those documents should not be required as a matter of course.
N	Customs Code requires submission of documents in the official language
C-1	
S-6	Enter Reservation

Chapter 2: Temporary storage of goods

Documentation

Recommended Practice 5

P	The Customs should accept the cargo declaration or another commercial document as the only document to be required to place the goods under temporary storage, provided that all the goods mentioned in that cargo declaration or that other commercial document are placed in a temporary store.
N	The transportation company's commercial document in general suffices unless there are some that have to be further moved to a secondary store in which case another document is required rather than just making the necessary marking in the commercial manifest
C-3	
S-3	

Authorized operations

Standard 7

P	Goods under temporary storage shall be allowed, for reasons deemed valid by the Customs, to undergo normal operations necessary for their preservation in their unaltered state.
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Recommended Practice 8

P	Goods under temporary storage should be allowed, for reasons deemed valid by the Customs, to undergo normal operations necessary to facilitate their removal from the temporary store and their further transport.
G	Generally normal operations necessary for the preservation of the goods in their unaltered state include: <ul style="list-style-type: none"> • Cleaning • Beating • Removal of dust • Sorting.
N	In practice maybe allowed but legislation is silent
C-3	
S-3	

Duration of temporary storage

Recommended Practice 10

P	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend the period initially fixed.
N	Code prohibits extension
C-1	

S-5	Reservation
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Specific Annex B: Importation

Chapter 3: Relief from import duties and taxes

Field of application

Recommended Practice 6

P	Contracting Parties should consider granting relief from import duties and taxes for goods specified in international instruments under the conditions laid down therein, and also give careful consideration to the possibility of acceding to those international instruments.
N	The general thrust of government is to remove most exemptions and just put nominal tariff except in few cases covered by international agreements of which the country is a signatory.
C-1	
S-5	

Recommended Practice 7

P	<p>Relief from import duties and taxes and from economic prohibitions and restrictions should be granted in respect of the following goods under the conditions specified, and provided that any other requirements set out in national legislation for such relief are complied with:</p> <ul style="list-style-type: none"> • therapeutic substances of human origin, blood grouping and tissue typing reagents, where they are consigned to institutions or laboratories approved by the competent authorities; • samples of no commercial value which are regarded by the Customs to be of negligible value and which are to be used only for soliciting orders for goods of the kind they represent; • removable articles other than industrial, commercial or agricultural plant or equipment, intended for the personal and professional use of a person or members of his family which are brought into the country with that person or separately for the purpose of removal of his residence to the country; • effects inherited by a person who, at the time of the death of the deceased, has his principal residence in the country of importation and provided that such personal effects were for the personal use of the deceased; • personal gifts, excluding alcohol, alcoholic beverages and tobacco goods, not exceeding a total value to be specified in national legislation on the basis of retail value; • goods such as foodstuffs, medicaments, clothing and blankets sent as gifts to an approved charitable or philanthropic organization for distribution free of charge to needy persons by the organization or under its control; • awards to persons resident in the country of importation subject to the production of any supporting documents required by the Customs; • materials for the construction, upkeep or ornamentation of military cemeteries; coffins, funerary urns and ornamental funerary articles imported by organizations approved by the competent authorities; • documents, forms, publications, reports and other articles of no commercial
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	<p>value specified in national legislation;</p> <ul style="list-style-type: none"> religious objects used for worship; and products imported for testing, provided that the quantities imported do not exceed those strictly necessary for testing, and that the products are used up during testing or that remaining products are re-exported or rendered commercially valueless under Customs control.
N	Many of these imports are already granted relief under Section 105 of the TCCP. However, a number are not covered.
C-1	
S-5	

Specific Annex C: Exportation

Strategy

- Accept Annex C
- Immediately identify with EDC and Philexport export commodities that needs the facilitation of Recommended Practice 2
- Amend PD 930 to allow use of Commercial Invoice following the standards under international conventions such as the UN/ECE Invoice Layout Key (see attach) as alternative exports goods declaration. In some respects, this alternative document even better describes the exported goods and particulars
- Develop a system and issue regulations allowing use of this standard commercial invoice

Chapter 1: Outright exportation

Documentation

Recommended Practice 2

P	National legislation should provide that goods may be declared in an alternative manner to the standard Goods declaration on the condition that it provides the necessary particulars relating to the goods to be cleared for outright exportation.
G	<ul style="list-style-type: none"> Customs usually specifies the types of goods that can be declared in this manner and normally extends the facility for goods which are in large volumes and of low risk or are unconditionally free of duties and taxes. This may include, for example, newspapers, journals and periodicals, and certain bulk construction materials such as cement or sand, etc. The alternative format to the standard Goods declaration could be a commercial document, for example an invoice or a transport document, as long as the necessary particulars relating to the goods to be exported are contained in the commercial document. A number of international efforts are underway to standardize commercial and transport documents (e.g. International Maritime Organization and International Civil Aviation Organization cargo declaration formats). The United Nations Economic Commission for Europe (UN/ECE) has adopted a Recommendation on an aligned invoice lay-out key for international trade which is an example of a standardized format for a commercial invoice. The use of any of these standardized formats for declaring goods for export in specified cases in lieu of a Goods declaration could be considered by administrations implementing this Recommended Practice. Customs is usually satisfied with a commercial document where the goods to be exported are not liable to export duties and taxes and do not give rise to repayment of or exemption from internal duties and taxes, and where the Goods

	declaration is not used for the compilation of statistics.
N	Current export procedures provides an export declaration form which require an HS Code which is not normally provided for in the commercial invoice
C-1	
S-3	Issue regulations allowing use of invoice standardized under the international convention as alternative to export goods declaration.

Specific Annex D: Customs Warehouses and Free Zones

G	The scope of this procedure may not cover only imported goods. For example, some administrations allow goods that are liable to, or have borne, internal duties and taxes (whether of national origin or previously imported against payment of import duties and taxes) to be stored in a Customs warehouse in order that they may qualify for exemption from or repayment of such internal duties and taxes. Thus the definition of the term "Customs warehousing procedure" covers the warehousing of imported goods since this is the use generally authorized, but the storage of goods of national origin is recommended as an additional case of the use of Customs warehouses. (See also Recommended Practice 9.) Similarly, the deposit in a Customs warehouse of goods that have previously been dealt with under another Customs procedure, such as temporary admission, with a view to subsequent exportation or other authorized disposal is also possible.
N	Sec 1901-1908 of the TCCP provides the legal basis for the warehousing of imported goods to achieve the objectives of this Annex. However, the expanded use of the facility to goods of national origin as well as those previously dealt with under previous regimes is not supported by the TCCP.

Strategy

- Accept Annex D1
- Enter Reservations on following Standard 2 and Recommended Practices 5, 7, 8, 9, 11, 12
- Issue implementing regulations on Standard 10

Chapter 1: Customs Warehouses

Classes of Customs warehouses

Standard 2

P	National legislation shall provide for Customs warehouses open to any person having the right to dispose of the goods (public Customs warehouses).
N	<ul style="list-style-type: none"> • Sec 1901-08 of the TCCP provides for the operation of these facilities "when the conditions of the port require." It is broad enough to support establishment of many types of public warehouses. • Historically, however, public bonded warehouses and off-dock cy/cfs were utilized as off-dock facilities when ports are congested or for purposes of decongesting the same. • For a brief period, bonded trading warehouses are allowed to operate but only for particular commodities in support of the export industry. • Licensing of warehouses for the purposes has already been discontinued. • In the case of off-dock cy/cfs, only cfs-cfs goods are allowed to use these off-dock facilities.

	<ul style="list-style-type: none"> The use of the word "shall" in this RKC standard makes the use of public bonded facility as a matter of right is against the legislation. There are now moves in Congress to altogether remove this facility.
C-1	
S-5	Only for goods for which the public facility was allowed to operate.

Admission of goods

Recommended Practice 5

P	<p>Storage in public Customs warehouses should be allowed for all kinds of imported goods liable to import duties and taxes or to prohibitions or restrictions other than those imposed on grounds of:</p> <ul style="list-style-type: none"> public morality or order, public security, public hygiene or health, or for veterinary or phytosanitary considerations; or the protection of patents, trade marks and copyrights, irrespective of quantity, country of origin, country from which arrived or country of destination. <p>Goods which constitute a hazard, which are likely to affect other goods or which require special installations should be accepted only by Customs warehouses specially designed to receive them.</p>
C-1	While Code is silent, regulations limit use of public warehouses to those for the purpose of decongesting the port and lcl cargo of shipping firms with arrangements with these facilities.
S-5	

Recommended Practice 7

P	Admission to Customs warehouses should be allowed for goods which are entitled to repayment of import duties and taxes when exported, so that they may qualify for such repayment immediately, on condition that they are to be subsequently exported.
N	Only imported goods are allowed.
C-1	
S-5	

Recommended Practice 8

P	Admission to Customs warehouses, with a view to subsequent exportation or other authorized disposal, should be allowed for goods under the temporary admission procedure, the obligations under that procedure thereby being suspended or discharged.
C1	Not allowed because of different concept of private warehouses which are for storage of goods intended ultimately for home use
S-5	

Recommended Practice 9

P	Admission to Customs warehouses should be allowed for goods intended for exportation that are liable to or have borne internal duties or taxes, in order that they may qualify for exemption from or repayment of such internal duties and taxes, on condition that they are to be subsequently exported.
C	Constructive Exports is only allowed for sales to enterprises operating manufacturing warehouses or located in ecozones as well as free ports
S-5	

Authorized operations

Standard 10

P	Any person entitled to dispose of the warehoused goods shall be allowed, for reasons deemed valid by the Customs: <ul style="list-style-type: none">• to inspect them;• to take samples, against payment of import duties and taxes wherever applicable;• to carry out operations necessary for their preservation; and• to carry out such other normal handling operations as are necessary to improve their packaging or marketable quality or to prepare them for shipment, such as breaking bulk, grouping of packages, sorting and grading, and repacking.
N	Not particularly provided under existing legislation but should be allowed
C-3	
S-3	

Duration of stay

Standard 11

P	The Customs shall fix the authorized maximum duration of storage in a Customs warehouse with due regard to the needs of the trade, and in the case of non-perishable goods it shall be not less than one year.
C1	Code's maximum period of storage is one year while the standard provides not less than 1 year.
S-5	

Transfer of ownership

Standard 12

P	The transfer of ownership of warehoused goods shall be allowed.
N	This standard is not applicable in public warehouse which essentially must observe the 45 day maximum period before abandonment and for decongest purposes. For private warehouse, the facility is for the requirements of the owner so if ownership changes, then goods must be taken out.

C-1	
S-5	

Chapter 2: Free Zones

Strategy

- Not to accept Chapter D2 on Free Zones. Standards 3 and 4 run counter with the RA 7916 making these facilities as outside customs control and vesting jurisdiction to PEZA. Standard 18 runs counter with PD 930 and current automation procedures on exports.
- It would be better to just not include this Chapter in the accession for the time being. The issues must be further studied and the law amended if found beneficial.
- All other Standards and Recommended Practices not against legislation should be complied with and made part of the Manual of Operations for Free Zones.

Guidelines

- As defined in the RKC, FREE ZONE means a part of the territory of a Contracting Party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the Customs territory.
- RA 7916 provides for free trade zones to be operated and managed as separate customs territory.

Establishment and control

Standard 3

P	The Customs shall lay down the arrangements for Customs control including appropriate requirements as regards the suitability, construction and layout of free zones.
N	Sec 8 of RA 7616 provides ecozones to be operated and managed as Separate Customs Territory As such, it is the zone authority board, which sets the requirements as regards the suitability, construction and layout of free zones. Customs sets the customs formalities and control mechanisms for the movement of goods into and out of the ecozones.
C-1	
S-5	Enter reservations to support separation of responsibilities between zone and customs authorities

Standard 4

P	The Customs shall have the right to carry out checks at any time on the goods stored in a free zone.
N	<ul style="list-style-type: none"> • CAOs 4-93 and 6-94 (Rules and Regulations for Customs Operations in the Subic SEFZ and Clark SEZ respectively) provides that officials of SBMA, CLARK and Customs are authorized to jointly conduct, at anytime during office hours any audit, check, or inventory count for the verification and reconciliation of the accounts or records of any registered enterprise in the zone. • RA 7916 on ecozones on the other hand provides for free trade zones to be operated and managed as separate customs territories and makes it the power and function of the authority to register, regulate and supervise enterprises in

	<p>the zone.</p> <ul style="list-style-type: none"> The gaps are 1) standard allows checking at anytime by customs vs. legislation where in SEZs and SEFZs, checks are allowed only during office hours and jointly with zone authorities 2) for freezones, the role of customs is not even recognized.
C-1	
S-5	Enter reservations to maintain status quo

Admission of goods

Recommended Practice 9

P	No Goods declaration should be required by the Customs in respect of goods introduced into a free zone directly from abroad if the information is already available on the documents accompanying the goods.
N	<ul style="list-style-type: none"> Goods introduced directly from abroad to the Subic and Clark SEZs are required under CAOs 4-93 and 6-94 an admission document issued by the zone authority which is very much like a goods declaration. On top of this, Customs is requiring a warehousing entry but enforcement is not uniform since it is not provided for in the CAOs. Goods introduced into the PEZA ecozones are required transshipment documents which are like goods declaration following the SAD.
C-1	
S-2	Issue clarificatory regulation for Subic and Clark that the admission document is sufficient and that there is no need for a goods declaration.
S5	Reservation to maintain status quo

Transfer of ownership

Standard 15

P	The transfer of ownership of goods admitted to a free zone shall be allowed.
N	Intra-Zone transfers, whether on a permanent basis such as sale or for subcontracting is allowed. However such is not stated outright in the IRR.
C-3	
S-3	

Removal of goods

Recommended Practice 18

P	Where a document must be produced to the Customs in respect of goods which on removal from a free zone are sent directly abroad, the Customs should not require more information than already available on the documents accompanying the goods.
N	PD 930 on export procedure prescribes an export declaration. Mapping of this form against commercial invoice following the UNECE format shows many common elements making it feasible to accept commercial invoices in lieu of export

	declaration
C-1	
S-1	

Specific Annex E: Transit

G	<ul style="list-style-type: none"> • “Transshipment” means the Customs procedure under which goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation. • The only regulation issued on Transshipment is CMO 22-93 dated 22 June 93 on Supplemental Rules on Transshipments for Foreign. • The CMO provides the period of stay in port of transshipments, the monitoring and control procedures to insure these are taken out of the country within the period prescribed and provides for a supervision fee by customs • Many RKC provisions are not covered by this CMO albeit legislation is not inconsistent. What must be done is to complete the CMO by including the RKC provision not currently covered except for the following: <ul style="list-style-type: none"> ○ Recommended Practice 6 - to maintain the status quo until a customs ICT system is set in place to allow electronic application, monitoring and control of transshipment operations ○ Recommended Practice 9 - no provision for application for extension. Overstaying are subjected to close supervision and control including supervision fee
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Chapter 2: Transshipment

Admission to transshipment

a. Declaration

Recommended Practice 6

P	The Customs should accept as the Goods declaration for transshipment any commercial or transport document for the consignment concerned which meets all the Customs requirements. This acceptance should be noted on the document.
N	Regulations prescribe a Transshipment Application (Foreign) form supplied by Customs.
C-1	
S-5	

b. Examination and identification of goods

Standard 7

P	When the Customs consider it necessary, they shall take action at importation to ensure that the goods to be transhipped will be identifiable at exportation and that
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	unauthorized interference will be readily detectable.
N	CMO 22-93 provides for a monitoring mechanism for those that are not transhipped within the specified period.
C-3	
S-3	

c. Additional control measures

Recommended Practice 9

P	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend any period initially fixed.
N	No provision for extension. However, these overstaying transhipments are subjected to differential monitoring.
C-1	
S-5	

d. Authorized operations

Recommended Practice 11

P	At the request of the person concerned, and subject to such conditions as the Customs may specify, the Customs should as far as possible allow goods in transshipment to undergo operations likely to facilitate their exportation.
G	However in some countries, certain operations intended to facilitate exportation are expressly authorized. These can be of different types such as grouping, change of packing, marking, sorting, and repair or replacement of damaged packing. On request, Customs should allow such operations when it seems reasonable.
C-3	
S-3	

Chapter 3: Carriage of goods coastwise

Coverage

Chapter 3 of Specific Annex E deals with the carriage coastwise of:

1. goods in free circulation
2. imported goods that have not been declared and which are transported in a vessel other than the importing vessel in which they arrived in the Customs territory. In Philippine Customs parlance this is termed domestic transhipment which is local transit with a change of carrier.

Field of application

Recommended Practice 4

P	At the request of the person concerned, and subject to such conditions as the Customs deem necessary, the latter should allow goods to be transported under the carriage of goods coastwise procedure on board a vessel which is to call at a foreign port during its voyage coastwise.
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N	Domestic carriers cannot engage in foreign trade without conversion from domestic to foreign. Therefore, if a domestic carrier is used as in most case of domestic transshipment, they cannot call on a foreign port. Also Cabotage Law prohibits conveyance of foreign goods from one port of entry to another port of entry. The situation envisioned here cannot happen.
S-1	
S-5	

Recommended Practice 5

P	When a vessel which is to call at a place or places outside the Customs territory has been authorized to convey goods under the carriage of goods coastwise procedure, those goods should be sealed only at the request of the person concerned or when the Customs consider sealing to be necessary to ensure that goods cannot be removed therefrom or other goods added thereto without this being readily apparent.
N	Not likely to happen except when carrier is hijacked.
C-1	
S-5	

Recommended Practice 6

P	When a vessel transporting goods under the carriage of goods coastwise procedure is forced to deviate from its intended route and to call at a place outside the Customs territory, the Customs should regard those goods as remaining under the carriage of goods coastwise procedure provided they are satisfied that the goods are those which were originally placed under the procedure.
N	Not likely to happen except when carrier is hijacked.
C-1	
S-5	

Loading and unloading

Recommended Practice 8

P	At the request of the person concerned, the Customs should, in the case of a vessel carrying only goods in free circulation under the carriage of goods coastwise procedure, allow such goods to be loaded or unloaded at any place and at any time.
N	<ul style="list-style-type: none"> • Customs does not require any form of formality for vessels carrying only free circulation goods. • Section 906 of the Code also requires manifest only when one or both the origin and destination port is a port of entry. • This is not an applicable provision for which reservation should be made.
C-1	
S-5	

Recommended Practice 9

P	At the request of the person concerned, the Customs should allow goods under the carriage of goods coastwise procedure to be loaded or unloaded at a place other than that normally approved for that purpose even if the vessel is also carrying imported goods that have not been declared or goods placed under any other Customs procedure. Any expenses chargeable shall be limited to the approximate cost of the services rendered.
N	Domestic carriers are not under supervision of Customs and are free to load and unload at any domestic port. The Customs interest is in the imported goods for which there are existing monitoring and control procedures.
C-3	
S-5	

Standard 11

P	When the transport of goods under the carriage of goods coastwise procedure is interrupted by accident or force majeure, the Customs shall require the master or other person concerned to take reasonable precautions to prevent the goods from entering into unauthorized circulation and to advise the Customs or other competent authorities of the nature of the accident or other circumstance which has interrupted the journey.
N	Implied as a responsibility for the carrier to avoid having to pay the duties, taxes and penalties for the goods. However this must be made clear in the regulations on domestic transshipment.
C-3	
S-3	

Standard 12

P	When a vessel transporting goods under the carriage of goods coastwise procedure is conveying imported goods that have not been declared or goods placed under any other Customs procedure, the Customs shall allow goods under the carriage of goods coastwise procedure to be loaded or unloaded as soon as possible after the arrival of the vessel at the place of loading or unloading.
N	Legislation is Silent. Advisable to put these in the statement of general principles of the regulations to be issued.
C-3	
S-3	

Documentation

Standard 13

P	The Customs shall require the master or other person concerned to present only a single document giving details of the vessel, listing the goods to be carried under the carriage of goods coastwise procedure and stating the port or ports in the Customs territory at which they are to be unloaded. This document, once endorsed by the Customs, shall constitute the authorization for the conveyance of the goods under the carriage of goods coastwise procedure.
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N	CAO 12-77 dtd Nov 7, 1977 provides the rules and regulations on the transshipment of imported cargoes from one port to another. A Transshipment Permit form is prescribed with the following supporting documents: <ul style="list-style-type: none"> • Transit manifest • Carrier's bond • Alert Notification (telegram) to the collector at the port of destination • Amendment to IFM (if needed)
C-1	
S-3	Particularly under the E-Commerce Law, a single document must be required (transshipment application) and the needed data bases for verification (carrier bond, manifest including amendment) must be made available in digital format and for the Pre-Alert to be automatically sent by the system. This has to be provided under the ICT system.

Recommended Practice 15

P	When a general authorization has been granted for a vessel, the Customs should require only a list of the goods to be conveyed under the carriage of goods coastwise procedure before the goods are loaded.
N	Not allowed under the CAO
C-1	
S-3,5	Upon completion of the electronic transshipment procedure, this may be implemented. In meantime reservation is in order.

Recommended Practice 16

P	In relation to goods unloaded from a vessel covered by a specific authorization, the Customs should require the master or other person concerned to present only a copy of the authorization listing the goods to be unloaded at that port. In the case of a vessel granted a general authorization, only a list of the goods unloaded should be required.
N	Not allowed under the CAO.
C-1	
S-3,5	Upon completion of the electronic transshipment procedure, this may be implemented. In meantime reservation is in order.

Specific Annex F: Processing

Coverage of the Procedure

- Inward processing - the Customs procedure under which certain goods can be brought into a Customs territory conditionally relieved from payment of import duties and taxes, on the basis that such goods are intended for manufacturing, processing or repair and subsequent exportation.
- Compensating products – the products resulting from the manufacturing, processing or repair of goods for which the use of the inward processing procedure is authorized.

- Equivalent goods – domestic or imported goods identical in description, quality and technical characteristics to those imported for inward processing which they replace.

Current Status of Compliance

Sec 2001-2004 of the TCCP on Manufacturing Bonded Warehouses provides the legal basis for the conduct of mainstream inward processing in the country. A person intending to regularly undertake inward processing may apply a license for his manufacturing/processing facility as a Customs Manufacturing Bonded Warehouse (CMBW).

CAO 2-91 and CMO 31-91 are the customs issuances implementing Sections 2001-04 of the Customs Code.

Many inward processing situations cannot be addressed by Sec 2001-04 of the TCCP and its implementing regulations. The regulations on the operations of Common Bonded Warehouses partly address the requirements of small companies. Currently there are 10 common garments BW and 10 miscellaneous Common BWs which have hundreds of members called subcontractors. However, a moratorium on the establishment of more common warehouses was issued after the discovery of massive abuses of the facilities.

Sec 105-d of the TCCP has also been used as a basis for inward processing. It provides that “Articles brought into the Philippines for repair, processing or reconditioning to be re-exported upon completion of the repair, processing or reconditioning...upon giving of a bond in an amount equal to one-and -a half times the ascertained duties and taxes...”. However, the regulations implementing the processing provision of the code which is CAO 3-78 has been revoked after discovery of abuses.

Therefore the breadth of inward processing conceived in this Specific Annex of RKC is not completely supported by current legislation. Inward processing as conceived in the RKC does not require the intermediation of CMBWs (regular or common) nor is it a requirement that the importer and the processor be one and the same person. Also unsupported is termination of the process with "equivalent goods" rather than the goods imported.

Proposed Strategy of Compliance. – Accept this Specific Annex but enter reservations as indicated in the following gap analysis.

Chapter 1: Inward processing

Field of Application

Standard 3

P	Inward processing shall not be limited to goods imported directly from abroad, but shall also be granted for goods already placed under another Customs procedure.
G	Goods may qualify for Inward Processing irrespective of the Customs procedure they were under immediately prior to the application for Inward Processing. This includes goods that have been previously cleared for home use.
N	For inward processing in a manufacturing bonded warehouse, this principle is followed provided the applicant or source is another bonded warehouse, an ecozone or if entered under consumption by a BOI- registered enterprise. For other suppliers where the goods have already been cleared for home use and already paid import duty and tax, there is no Customs regulations providing the mechanics for the refund.
C-1	
S-5	Reservation must be made in so far as goods already cleared from home use until a control system can be set in place to prevent abuse of this procedure.

Recommended Practice 7

P	<p>The possibility of determining the presence of the imported goods in the compensating products should not be imposed as a necessary condition of inward processing when:</p> <p>(a) the identity of the goods can be established:</p> <ul style="list-style-type: none"> • by submitting the details of the inputs and the process of manufacture of the compensating products; or • during the processing operations by Customs control; or <p>(b) the procedure is terminated by the exportation of products obtained from the treatment of goods identical in description, quality and technical characteristics to those admitted for inward processing.</p>
N	<p>Manufacturing warehousing operations does not require at all that the imported material be identifiable in the finished goods to be entitled to inward processing. Reliance is made on the formula of manufacture and the authorized manufacturing process. But this matter is implied rather than outrightly stated in legislation and it would be advisable to make the legislation clear on this matter.</p>
C-3	
S-3	

Placing goods under inward processing

a. Authorization for inward processing

Recommended Practice 10

P	<p>When an application for inward processing is made after the importation of the goods and meets the criteria for authorization, the authorization should be granted retroactively.</p>
G	<p>The principle contained in this Recommended Practice is an extension of the facility provided in Standard 3 of this Chapter. Recommended Practice 10 offers traders the opportunity to be granted a retrospective authorization for inward processing for goods that have already been cleared for home use. The main advantages are that it offers a greater facility to traders by enabling duties and taxes to be repaid more quickly than would be possible under the drawback procedure (where it is applied), and in some instances enables them to obtain a refund of duties and taxes which might not be available under other procedures.</p>
N	<ul style="list-style-type: none"> • Supplies of goods to manufacturing bonded warehouses are deemed exports and the import duties and taxes paid are entitled to refund. • The procedure followed when the source of the goods is another bonded facility is constructive exports (for the supplier) and constructive imports for the inward processor. For those non-bonded facility but are BOI registered, the control and security of constructive imports is not even there, resulting in abuses and fraud on customs revenue. For those from non-bonded facility as well as non-BOI, the exemption under inward processing has currently no acceptable control system and implementing regulations. Their situation may however be partly managed under the NIRC if the inward processor exports at least 70% of its production.

	Sales and inward processing in this case is zero-rated for VAT for which taxes paid is amenable for refund.
C-1	
S-3,5	Issue regulations for BOI registered sources to apply for inward processing either thru constructive exports and for the receiving facility for constructive imports. For non-bonded and BOI sources, enter reservations.

b. Identification measures

Standard 14

P	The requirements relating to the identification of goods for inward processing shall be laid down by the Customs. In carrying this out, due account shall be taken of the nature of the goods, of the operation to be carried out and of the importance of the interests involved.
G	For the identification of goods admitted for inward processing, Customs will normally rely on foreign seals affixed to the goods, on marks, numbers or other indications permanently affixed to them, on the description of the goods or scale plans or photographs. Customs may also take samples or affix Customs marks (seals, stamps, perforations, etc.) in order to identify the goods. Where national legislation or the authorization provides, Customs may also have access to the importers' records.
N	Legislation is silent
C-3	
S-3	

Stay of the goods in the Customs territory

Recommended Practice 16

P	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend the period initially fixed.
N	The law does not provide extension under sec 105-d while only 3 months extension is allowed for manufacturing warehouse operations.
C-1	
S-5	

Recommended Practice 17

P	Provision should be made for continuing inward processing in the event of transfer of ownership of the imported goods and the compensating products to a third person, provided that that person assumes the obligations of the person granted the authorization.
N	Legislation is silent.
C-3	
S-3	

Standard 19

P	Provision shall be made to permit compensating products to be exported through a Customs office other than that through which the goods placed under inward processing were imported.
N	Legislation is silent but this is permitted.
C-3	
S-3	

Termination of inward processing

a. Exportation

Standard 20

P	Provision shall be made to permit inward processing procedures to be terminated by exportation of the compensating products in one or more consignments.
N	Permitted though not expressly stated in the legislation.
C-3	
S-3	

Standard 21

P	Upon request by the person concerned, the competent authorities shall authorize the re-exportation of the goods in the same state as imported, with termination of inward processing.
N	Sec 2002 requires that materials be used else duties and taxes be paid. For a while the Embroidery Law allowed this also. In practice, goods are being re-exported under the same state on the guise of being defective. Processing under Sec 105d allows this by implication.
C-1	
S-1	Amend the law to allow this to support trade and to stop circumventions that are opportunities for corruption.

b. Other methods of disposal

Recommended Practice 22

P	Provision should be made for suspending or terminating inward processing by placing the imported goods or the compensating products under another Customs procedure, subject to compliance with the conditions and formalities applicable in each case.
G	The inward processing procedure is discharged for the imported goods when the compensating products or goods in the unaltered state have been declared for another Customs procedure and all other conditions for use of the procedure have been complied with
N	Putting the compensating products under the regimes of free zones as well as home use is allowed. Other regimes like transits or warehousing are not supported
C-1	

S-5	
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Recommended Practice 25

P	The products obtained from the treatment of equivalent goods should be deemed to be compensating products for the purposes of this Chapter (setting-off with equivalent goods).
G	National legislation usually requires that the products exported have been obtained from the goods imported. In some cases, however, authorization may be given for the use of goods equivalent to those admitted for inward processing for the production of the actual compensating products. When this authorization is granted, the equivalent goods must normally be of the same commercial quality and have the same technical characteristics as the imported goods.
N	This recommended practice is not supported under current legislation. Any imported goods used not for the intended purpose is considered as illegally withdrawn.
C-1	
S-5	

Recommended Practice 26

P	When setting-off with equivalent goods is allowed, the Customs should permit the exportation of compensating products prior to the importation of goods for inward processing.
N	This recommended practice is not supported under current legislation.
C-1	
S-5	

Chapter 2: Outward processing

G	<ul style="list-style-type: none"> • Outward processing means the Customs procedure under which goods which are in free circulation in a Customs territory may be temporarily exported for manufacturing, processing or repair abroad and then re-imported with total or partial exemption from import duties and taxes. • Compensating products means the products obtained abroad and resulting from the manufacturing, processing or repair of goods for which the use of the outward processing procedure is authorized.
N	<ul style="list-style-type: none"> • Compared to Inward Processing, real Outward Processing is not at present a significant business activity in the country. The only documented cases of outward processing pertains to articles that are easily identifiable and sent abroad for repairs like vessels and aircrafts and computers, equipment, machineries and parts. However there is optimism that with China providing cheap labor and excess manufacturing capacity, outward processing of raw materials will take-on and prosper in the future. • Sec 105-c provides that “cost of repairs, excluding the value of the article used, made in foreign countries upon vessels and aircrafts documented, registered or licensed in the Philippines...” shall be qualified as conditionally free.

	<ul style="list-style-type: none"> • Sec 105(x) provides that “articles of easy identification exported from the Philippines for repair and subsequently re-imported...” shall be qualified as conditionally free imports. There are no provisions dealing with goods (particularly raw materials) in free circulation sent abroad for manufacturing or processing for subsequent re-importation to the Philippines. • Sec 105(t) while dealing with “Philippine articles previously exported and returned” provides that the article must not have been advanced in value or improved in condition by any process of manufacture or other means...” • It may be said therefore that Philippine national legislation is not compliant with Specific Annex F2 of the RKC articles sent abroad for repairs which is covered by sec 105 (x).
S	<ul style="list-style-type: none"> • Not to accept this Annex for the time being to facilitate the country's accession to the RKC. • Undertake a survey to ascertain if there is significant outward processing business activity not covered by the existing legislation to justify amending the law. Only then should the country again consider accepting this specific Annex.

Field of Application

Recommended Practice 2

P	Outward processing should not be refused solely on the grounds that the goods are to be manufactured, processed or repaired in a given country.
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Standard 3

P	Temporary exportation of goods for outward processing shall not be restricted to the owner of the goods.
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Placing goods under outward processing

a. Formalities prior to temporary exportation of the goods

Standard 4

P	National legislation shall enumerate the cases in which prior authorization is required for outward processing and specify the authorities empowered to grant such authorization.
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Such cases shall be as few as possible

Recommended Practice 5

P	Persons who carry out regular outward processing operations should, on request, be granted a general authorization covering such operations.
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Recommended Practice 6

P	The competent authorities should fix a rate of yield for an outward processing operation when they deem it necessary or when it will facilitate the operation. The description, quality and quantity of the various compensating products shall be specified upon fixing that rate.
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b. Identification measures

Standard 7

P	The requirements relating to the identification of goods for outward processing shall be laid down by the Customs. In carrying this out, due account shall be taken of the nature of the goods, of the operation to be carried out and of the importance of the interests involved.
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Stay of the goods outside the Customs territory

Standard 8

P	The Customs shall fix the time limit for outward processing in each case.
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Recommended Practice 9

P	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend the period initially fixed.
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Importation of compensating products

Standard 10

P	Provision shall be made to permit compensating products to be imported through a Customs office other than that through which the goods were temporarily exported for outward processing.
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Standard 11

P	Provision shall be made to permit compensating products to be imported in one or more consignments.
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Standard 12

P	Upon request by the person concerned, the competent authorities shall allow goods temporarily exported for outward processing to be re-imported with exemption from import duties and taxes if they are returned in the same state. This exemption shall not apply to import duties and taxes which have been repaid or remitted in connection with the temporary exportation of the goods for outward processing.
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Standard 13

P	Unless national legislation requires the re-importation of goods temporarily exported for outward processing, provision shall be made for terminating the outward processing by declaring the goods for outright exportation subject to compliance with the conditions and formalities applicable in such case.
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Duties and taxes applicable to compensating products

Standard 14

P	National legislation shall specify the extent of the exemption from import duties and taxes granted when compensating products are taken into home use, and the methods of calculation of that exemption.
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Standard 15

P	The exemption from import duties and taxes provided for in respect of compensating products shall not apply to duties and taxes which have been repaid or remitted in connection with the temporary exportation of the goods for outward processing.
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Recommended Practice 16

P	Where goods temporarily exported for outward processing have been repaired abroad free of charge, provision should be made for them to be re-imported with total exemption from import duties and taxes under the conditions laid down in national legislation.
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Recommended Practice 17

P	The exemption from import duties and taxes should be granted if the compensating products were placed under another Customs procedure prior to being declared for home use.
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Recommended Practice 18

P	The exemption from import duties and taxes should be granted if the ownership of the compensating products is transferred before they are taken into home use.
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Chapter 3: Drawback

- "drawback procedure" means the Customs procedure which, when goods are exported, provides for a repayment (total or partial) to be made in respect of the import duties and taxes charged on the goods, or on materials contained in them or consumed in their production;
- "equivalent goods" means domestic or imported goods identical in description, quality and technical characteristics to those under the drawback procedure which they replace.
- "drawback" means the amount of import duties and taxes repaid under the drawback procedure;

Field of application

Recommended Practice 3

P	National legislation should include provision for the application of the drawback procedure in cases where the goods which have borne import duties and taxes have been replaced by equivalent goods used in the production of exported goods.
G	<ul style="list-style-type: none"> • In principle imported goods which have borne import duties and taxes must be exported in order to qualify for drawback. However, as a facility to traders, where such goods are replaced by equivalent goods in the production of exported goods, this provision recommends that the drawback procedure should also be applied. • This provision should apply whether or not it is possible to distinguish the imported goods from the equivalent goods, for example, where they have not been segregated for storage. The question of equivalence is related to the quantity of the goods rather than to the identification of precisely which goods had borne the import duties and taxes. From an economic point of view, allowing equivalent goods which are of domestic origin as replacements helps to generate domestic economic activities.
N	<ul style="list-style-type: none"> • Sec 105-c provides the conditions for refund or tax credit, two of which are: <ul style="list-style-type: none"> ○ The actual use of the imported materials in the production or manufacture of the article exported... ○ There are no available locally produced or manufactured competitive substitutes... • From the foregoing, it is clear that the imported goods itself must be exported, not equivalent goods, to be entitled to drawback
C-1	
S-1	<ul style="list-style-type: none"> • Enter reservation first. • Study must be made if there are current business operations that would be benefited by the acceptance of this standard and if the economy as a whole will benefit. In the case of sugar exports, quota giving countries like the US allow the Philippines to import sugar for its domestic needs so the country can export more of the domestically produced sugar and to fully utilize the national quota

Conditions to be fulfilled

Standard 4

P	The Customs shall not withhold payment of drawback solely because, at the time of importation of the goods for home use, the importer did not state his intention of claiming drawback at exportation. Similarly, exportation shall not be mandatory when such a statement has been made at importation.
N	<p>The Customs Code itself does not make prior statement of intention to export and to avail of drawback to be entitled to it.</p> <p>However, the implementing regulations (CAO 14-72 and CMO 25-86) provide that the goods declaration be clearly marked "Subject to Drawback", meaning that the</p>

	<p>intention must be made at the time of import to avail of drawback. Furthermore, CMO 41-83 requires that the export declaration be marked in red "Subject to Drawback" and in a ruling made by the Department of Finance circulated under CMC 153-90, failure to mark export document is a disqualification for the grant of duty drawback.</p> <p>On the other hand, goods entered under warehousing (Sec 1901-08 of the TCCP) withdrawn for home use upon payment of duties and taxes and manufacturing into finished goods may avail of drawback if said finished goods were delivered to a manufacturing bonded warehouse (Sec 2001-04) and exported. In this situation, there is no prior declaration of intention and yet drawback is allowed. Examples are those packaging companies manufacturing KD boxes mainly for the domestic market. But whenever they supply customs garment manufacturing warehouses for exports, the duties and taxes paid on withdrawal of the raw materials may be subject to refund.</p>
C-1	Implementing Regulations and the law are not consistent and on the whole, there is no compliance with RKC.
S-3	For facilitation, CAO and CMO must be issued rectifying the inconsistency. Marking subject to drawback is for facilitation of processing which is the lookout of trade but cannot be a disqualification.

Duration of stay of the goods in the Customs territory

Recommended Practice 5

P	Where a time limit for the exportation of the goods is fixed beyond which they no longer qualify for drawback, this should, upon request, be extended if the reasons are deemed valid by the Customs.
N	Sec 106(c)(4) requires that exportation shall be made within one year after importation of materials and the claim for refund or credit shall be filed within 6 months of export with no provision for extension.
C-1	
S-5	

Recommended Practice 6

P	Where a time limit is fixed beyond which claims for drawback will not be accepted, provision should be made for its extension for commercial or other reasons deemed valid by the Customs.
N	No provision for extension.
C-1	
S-5	

Payment of drawback

Recommended Practice 8

P	National legislation should provide for the use of electronic funds transfer for the payment of drawback.
N	Drawback claims when granted are usually paid in tax credits unless the beneficiary

	can prove that he will have no use for credit in which case he must line up for priority of payment in the annual budget set by the Government for cash refunds which are in Treasury Checks.
C-1	
S-1	

Recommended Practice 9

P	Drawback should also be paid on deposit of the goods in a Customs warehouse or introduction of the goods into a free zone, on condition that they are subsequently to be exported.
G	<ul style="list-style-type: none"> • Often goods meant for export are deposited in a Customs warehouse pending the clearance formalities and the arrival of the vessel or there are delays in the export of the goods due to the non-arrival or non-availability of vessels or due to force majeure. This Recommended Practice enables the exporter to obtain the drawback instead of waiting for the actual shipment of the goods. It should be noted that in applying this provision Customs would be permitting the entry into a Customs warehouse of goods having previously borne import duties and taxes, a departure from the definition of the term "Customs warehouses". • Free zones are considered to be areas outside the Customs territory insofar as the duties and taxes on goods are concerned. Thus if certain goods are eligible for payment of drawback when exported, they would automatically qualify for such payment once they are introduced into a free zone.
N	The Code, however, in so far as duty drawback is concerned, requires actual exports of the imported goods and not just receipt at a customs warehouse unlike delivery to a free zone which is considered as constructive exports for which duty drawback may be given
C-1	
S-5	Reservation on deliveries to customs warehouses and prior to exports.

Recommended Practice 10

P	The Customs should, if so requested, pay drawback periodically on goods exported during a specified period.
N	Currently, application for drawback is a one time process undertaken after full export of the goods imported.
C-1	
S-1,3,5	This is a good trade facilitation measure. To align the procedure to the manufacturing warehouse operations, system to achieve this must be developed. In meantime so as not to delay accession, enter reservation.

Chapter 4: Processing of goods for home use

This Chapter of Annex F was not accepted by the US in its accession to the RKC.

Processing of goods for home use means the Customs procedure under which imported goods may be manufactured, processed or worked under Customs control before clearance for home use. The procedure could lower the amount of the import duties and taxes payable since the product(s) of the operation may have a lower tariff rate, value and quantity compared to those of the imported goods.

The differences of this procedure with the private warehousing operations under Section 1901-08 of the TCCP are as follows:

1. The duties and taxes payable under the processing for home use is computed based on the value, classification and quantity of the outputs, not on the imported material or input as is the case under Sec 1901-08 of the TCCP .
2. As contemplated, the rate of duty on the output product(s) for most inward processing for home use operations would be lower than the applicable rates on the imported inputs (although it may be the same or even). The kinds of businesses that would avail of the procedure are those that would not be normally viable if managed under Sec 1901. For example, it may be considered in the economic interest for more than 5 year old motor to be imported for purposes of recovering usable parts. If duties and taxes were to be paid based on the 30% rate of duty of cars and their depreciated value, the cost of the output products would be prohibitive. But these cars are first broken down into their component into parts and then allowed to enter the customs territory as parts as would be the case under processing for home use, then the operations may be prove viable.

In theory, the operations of free ports and freezones can support these operations. If allowed by zone authorities, payment of customs duties and taxes shall be based on the output goods and not on the imported inputs to the processing.

To be compliant with the provisions of this Annex, the procedure must be allowed in the customs territory as well. Under the Code, the only way goods may be brought in for manufacturing or processing or eventual home use is thru Section 1908. So the whole Annex is not consistent.

C-1	
S-6	

Not to Accept

Specific Annex G: Temporary Admission

Coverage:

The Customs procedure under which certain goods can be brought into a Customs territory conditionally relieved totally or partially from payment of import duties and taxes; such goods must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

The fundamental principle of temporary admission with re-exportation in the same state is to allow, under certain conditions, the importation of goods into the Customs territory of the country of destination for a specified period without collecting the duties and taxes applicable to those goods.

Field of application

Standard 4

P	Temporary admission shall not be limited to goods imported directly from abroad, but shall also be granted for goods already placed under another Customs procedure.
G	It is not necessary that the goods should have come directly from abroad. In particular, temporary admission can be granted on termination of a transit procedure or warehousing procedure and for goods coming from free ports or free zones

N	Temporary Admission may be granted at the termination of transit and for goods coming from free ports or free zone. However allowing temporary admission at the end of the warehousing period (one year maximum) is not consistent with Sections 1907 and 1908 which provisions limit withdrawal to consumption, transportation to another port, for exportation or for delivery on board an international aircraft or vessel. Sec 1908 on the other hand provides that articles not withdrawn at the expiration of the prescribed period shall be sold at public auction.
C-1	
S-5	However regulations must be issued allowing Temporary Admission following completion of transit and coming from a free port/zone

Recommended Practice 5

P	Temporary admission should be granted without regard to the country of origin of the goods, the country from which they arrived or their country of destination.
N	There is nothing in Sec 105 that prohibits this for certain countries either origin or destination.
C-3	
S-3	

Standard 6

P	Temporarily admitted goods shall be allowed to undergo operations necessary for their preservation during their stay in the Customs territory. Formalities prior to the granting of temporary admission
G	Temporarily admitted machines and apparatus can undergo normal maintenance. Maintenance is intended to prevent excessive wear or breakdown and often involves replacing certain parts (e.g. gaskets). For machines, maintenance work can even cover fairly complex operations. If these operations seem reasonable to Customs, they should be authorized. It should nevertheless be understood that operations needed to keep temporarily admitted articles in good condition are not mandatory.
N	Legislation is silent. There is nothing that would disallow this.
C-3	
S-3	

Formalities prior to the granting of temporary admission

Recommended Practice 9

P	The Customs should grant temporary admission without a written Goods declaration when there is no doubt about the subsequent re-exportation of the goods
G	<ul style="list-style-type: none"> • Many Customs administrations accept and process Goods declarations electronically and use the techniques of risk management to release the goods automatically. • International documents such as the ATA carnet can take the place of national temporary admission documents for Contracting Parties to the relevant Conventions (Istanbul Convention or ATA Convention). Since these temporary admission papers are covered by an international guaranteeing chain their use

	may make it unnecessary to provide another form of security when the goods are placed under the temporary admission procedure.
C-1	In all the instances of temporary admissions, the TCCP requires written security which means that at the very least, the clearance process is under yellow lane processing (needed security and other supporting docs must be presented). In fact the goods must be properly identified so it goes thru red lane.
S-5	

Recommended Practice 10

P	Contracting Parties should give careful consideration to the possibility of acceding to international instruments relating to temporary admission that will enable them to accept documents and guarantees issued by international organizations in lieu of national Customs documents and security.
G	<ul style="list-style-type: none"> The Convention on Temporary Admission (Istanbul Convention) of 26 June 1990 combines in a single instrument all the provisions concerning temporary admission that are contained in a large number of existing conventions and agreements. It endeavours to simplify and harmonize procedures in pursuit of economic, humanitarian, cultural, social or touristic objectives. Annex A to the Istanbul Convention requires each Contracting Party to accept the ATA carnet in lieu of its national Customs documents and as security for payment of the duties and taxes. In many cases, it provides for temporary admission without a Customs document and without security.
N	<ul style="list-style-type: none"> The Philippines is not a signatory to the Istanbul Convention nor of any convention on temporary admission. All manifested cargo are required to be entered using the standard goods declaration forms. Likewise, baggage accompanying arriving passengers outside of those that maybe released under the simplified passenger customs declaration form are required the regular goods declaration form (formal or informal entry)
C-1	
S-5	While reservation must be made, a program must be initiated initially at the airport and for arriving passengers to accept ATA carnet covering accompanied goods that maybe released under temporary admissions. Study accession to the Istanbul Convention.

Identification measures

Standard 11

P	Temporary admission of goods shall be subject to the condition that the Customs are satisfied that they will be able to identify the goods when the temporary admission is terminated.
G	This principle does not mean, however, that the goods must be physically examined more than is required under other procedures. The principle of risk management as enumerated in Chapter 6 of the General Annex is equally applicable in the temporary admission procedure.
N	The Customs Code does not directly state but CAO7-72, the implementing regulation, provides that the Customs examiner undertake an examination for the purpose of proper identification.

C-1	
S-3	The regulations may be amended to support this standard.

Recommended Practice 12

P	For the purpose of identifying goods temporarily admitted, the Customs should take their own identification measures only where commercial means of identification are not sufficient.
G	<ul style="list-style-type: none"> • Customs may identify the goods by description, by photographs or by sampling, or by affixing its own marks. • Affixing Customs marks should be the exception because it considerably slows down clearance formalities: customs seals (for example, lead seals available in several sizes, appropriate to the goods to be identified), identification band, stamp punches (on a malleable metal part or on sealing wax) and rubber-stamp marks (on sprayed paint) or corrosive stamps on stainless steel objects. • In the great majority of cases existing the necessary data are already available in commercial documents such as the delivery note, bill of lading, invoice or descriptive list. The indications in these papers are generally sufficient to enable the goods to be identified.
N	Legislation is silent on how identification must be done and on the use of special procedures/gadgets
C-3	
S-3	

Time limit for re-exportation

Recommended Practice 14

P	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend the period initially fixed.
N	Maximum period for extensions allowed: B 6 months D None G 3 months G-1 6 months I 6 months J 6 months M None Q None
C-1	Legislation is silent on how identification must be done and on the use of special procedures/gadgets.
S-5	However, Customs Code must be amended later to also provide extension for D and Q when the Collector of the Port finds it meritorious.

Recommended Practice 15

P	When the goods granted temporary admission cannot be re-exported as a result of a seizure other than a seizure made at the suit of private persons, the requirement of re-exportation should be suspended for the duration of the seizure.
G	Goods admitted under temporary admission may be seized by customs authorities for violation of the condition for temporary admission. Pending the resolution of the seizure proceedings, and to avoid difficulties that will be entailed in exporting goods, the requirement to re-export them should be suspended for the duration of a seizure.
N	Legislation is silent on this.
C-3	
S-3	

Transfer of temporary admission**Recommended Practice 16**

P	On request, the Customs should authorize the transfer of the benefit of the temporary admission to any other person, provided that such other person : (a) satisfies the conditions laid down; and (b) accepts the obligations of the first beneficiary of the temporary admission.
N	Legislation is silent.
C-3	
S-3	

Termination of temporary admission**Standard 17**

P	Provision shall be made to permit temporarily admitted goods to be re-exported through a Customs office other than that through which they were imported.
N	Legislation is silent.
C-3	
S-3	

Standard 18

P	Provision shall be made to permit temporarily admitted goods to be re-exported in one or more consignments.
N	Legislation is silent.
C-3	
S-3	

Recommended Practice 19

P	Provision should be made for suspending or terminating temporary admission by placing the imported goods under another Customs procedure, subject to compliance with the conditions and formalities applicable in each case.
G	Upon placement of the goods into free ports, free zones or Customs warehouses, the temporary admission procedure should be terminated immediately. In some countries, however, the temporary admission procedure is not terminated but merely suspended pending the physical exportation of the goods or their being placed under another Customs procedure, for example, clearance for home use. Thus the temporary admission procedure is provisionally interrupted and will be terminated upon the entry of the goods into the subsequent procedure.
N	<ul style="list-style-type: none"> • Sec 105 b, d, g, g-1, i, j, m and q only provides two ways for terminating temporary admissions. These are exportation or clearance for home use. Procedures that are “like exportation” such as delivery into free ports or free zones or areas considered outside Customs territory for duty and tax purposes and for which relief or refund of duties and taxes paid or for zero rating of VAT is permitted should also be considered a legal terminations of temporary admissions. • Constructive exports to customs manufacturing warehouses is for finished goods that will be processed further in another facility and not goods that will not undergo any transformation or remain in their original state.
C-1	
S-5	Reservation because of warehousing. However, termination of temporary admission by delivery to a free port or free zone must be recognized.

Recommended Practice 20

P	If prohibitions or restrictions in force at the time of temporary admission are rescinded during the period of validity of the temporary admission document, the Customs should accept a request for termination by clearance for home use.
N	Termination thru home use implies that at the time of filing for home use, current prohibitions or restrictions govern rather than those in effect at time of temporary admission. To be clear, regulations must be issued.
C-3	
S-3	

Recommended Practice 21

P	If security has been given in the form of a cash deposit, provision should be made for it to be repaid at the office of re-exportation, even if the goods were not imported through that office.
N	There is nothing in the legislation that does not support this. However, supporting this recommended practice requires a good system which must preferably be an IT system to insure proper control. Better to enter reservation until the corresponding IT system is set in place.
C-3	
S-5	

Cases of temporary admission

b. Partial conditional relief from import duties and taxes

Recommended Practice 23

P	Goods which are not included in Recommended Practice 22 and goods in Recommended Practice 22 which do not meet all the conditions for total conditional relief should be granted temporary admission with at least partial conditional relief from import duties and taxes.
G	<ul style="list-style-type: none">• Some countries are increasingly allowing commercial utilization during the temporary admission procedure. This applies particularly to machines imported temporarily to perform specific tasks (e.g. construction machinery, production machinery, production trials). This possibility is justified by the fact that the home use procedure for high technology machines with high rates of duties and taxes would seem to be a disproportionate measure if the machines were to be used only for a short time.• This recommendation provides for the temporary admission of these goods at least with partial conditional relief.
N	<ul style="list-style-type: none">• Philippine legal jurisprudence is that when there is an enumeration, what is not included can not extended the entitlement or coverage of the legal provision. These cannot even be entitled to partial relief.• However there have been occasions in the past with Presidential Orders, temporary admission have been allowed for construction equipment used in government and foreign funded projects• Notwithstanding, this cannot be made part of regular national legislation.
C-1	
S-5	

Specific Annex H: Offences

Chapter 1: Customs offences

Coverage

- Customs offence means any breach, or attempted breach, of Customs law.
- Administrative Settlement of a Customs offence means the procedure laid down by national legislation under which the Customs are empowered to settle a Customs offence either by ruling thereon or by means of a compromise settlement.
- Compromise settlement means an agreement under which the Customs, being so empowered, consent to waive proceedings in respect of a Customs offence subject to compliance with certain conditions by the person(s) implicated in that offence.

Overall Strategy

- The fundamental principles as well as most of the standards and recommended practices in this Annex are already being observed by Philippine Customs.
- It will not subtract but would only add to the quality of observance of the principles and implementation of laws, rules and regulations if these are clearly stated in Customs legislation.

- Recommend that there be a part in the Customs Operation Manual to be devoted to customs offenses the opening portions of which should state the principles enunciated in this specific annex.

Investigation and establishment of Customs offences

Standard 6

P	Personal searches for Customs purposes shall be carried out only when there are reasonable grounds to suspect smuggling or other Customs offences which are regarded as serious.
N	Except for some unnumbered memorandum at NAIA mandating the creation of Customs physical examination rooms and the conduct of body searches thereat, legislation is silent. Sec. 221 and 2212, TCCP – may now be compliant.
C-3	
S-3	

Procedure to be followed when a Customs offence is discovered

Recommended Practice 10

P	The Customs should set out the particulars of Customs offences and the measures taken in offence reports or administrative records. Seizure or detention of the goods or means of transport.
G	Record usually contains such particulars as the nature of the offence discovered; the laws violated; date and location of discovery of the offence; persons implicated; description of any goods, conveyances or documents involved; nature of the investigations undertaken and their results; and officers involved in the discovery and investigation of the offence from the time of the discovery of the offence to the time it is finally settled by an administrative settlement, court proceedings or just closed without any further action. Some administrations maintain such a record in an investigation paper or file. Recording the measures taken in the offence report or in the administrative record is not only to protect the rights of the defendants, as well as Customs, but also to compile statistics and build risk assessment techniques. In addition, this will later facilitate to establish what happened.
N	The main files maintained by Customs for customs offences are the case dockets containing all the documents related to the seizure cases: seizure recommendation, WSD, offer of evidence, affidavits etc, which while containing most of the data above is not organized to be a basis of compiling statistics not for risk management.
C-3	
S-3	

Seizure or detention of the goods or means of transport

Recommended Practice 15

P	The Customs should release from seizure or detention means of transport that have been used in the commission of a Customs offence where they are satisfied that:
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	<ul style="list-style-type: none"> • the means of transport have not been constructed, adapted or altered or fitted in any manner for the purpose of concealing goods; and • the means of transport are not required to be produced as evidence at some later stage in the procedure; and • where required, adequate security can be given.
N	While Section 2301 of the TCCP on release of seized property under cash bond may be liberally interpreted to apply to the means of transport as well, release is not allowable when there is prima facie evidence of fraud. Furthermore, Section 2530 provides that the mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vehicle, aircraft or any other craft subject to forfeiture. Exempted are duly authorized common carriers.
C-1	
S-5	

Administrative settlement of Customs offences

Standard 19

P	<p>The Customs shall take the necessary measures to ensure, where applicable, that as soon as possible after a Customs offence is discovered:</p> <ul style="list-style-type: none"> • the administrative settlement of the latter is initiated; and • the person concerned is informed about the terms and conditions of the settlement, the avenues of appeal and the time limits for such appeals.
N	While various legal remedies are available for the release of the goods pending resolution of seizure case, legislation provides that the affected party and not Customs should initiate the same. Two of these remedies are release under cash bond and redemption. Other customs offenses not involving seizure but for which amounts are collectible maybe subject of compromise settlement.
C-3	
S-3	Regulations must be issued making it the responsibility of concerned customs officials to initiate these remedies.

Recommended Practice 21

P	Where a traveller is regarded as having committed a Customs offence of minor importance, it should be possible for the offence to be settled without delay by the Customs office which discovers it.
N	If the traveller's offense does not warrant the seizure of goods as when the discrepancy threshold is not reached, the matter can be administratively settled at once by the office that discovers the offense (payment of additional duty plus surcharge if warranted). However when goods are not declared or if these are prohibited goods, seizure is mandatory.
C-1	
S-5	

Standard 25

P	Where a Customs offence occurs as a result of force majeure or other circumstances beyond the control of the person concerned and there is no question of negligence or fraudulent intent on his part, no penalty shall be applied provided that the facts are duly established to the satisfaction of the Customs.
N	Under the Customs Code, there is prima facie fraud when certain conditions are obtaining rendering the goods liable for seizure. Goods that are not declared or misdeclared are to be forfeited in favor of the government. During seizure proceeding, force majeure and other circumstances beyond the control of the person maybe raised to show there is no negligence nor fraudulent intent While this defense has not been entertained, there have been cases when on appeal with higher authorities or with courts, no penalty is imposed. For offenses related to Customs declaration such as misdeclaration, undervaluation and misclassification but the discrepancies do not exceed the threshold for seizure, the person concerned may apply for non-imposition of surcharge which is already covered by CAO 10-93.
C-1	
S	Not to accept this standard for which reason we cannot accept Annex H.

Specific Annex J: Special Procedures

Background

There are many tourist spots in the country that can be opened to direct calls/visits by foreigners traveling on their private yachts and aircrafts. National legislation must provide for the handling of these modes of transport by travelers.

Strategy

- Accept Annex J1
- Accede to the Customs Convention on ATA CARNET as well as the Istanbul Convention to facilitate as well as secure the cross border flow of goods such as pleasure yachts and aircrafts. Another is the New Convention on Pleasure Yachts and aircraft.
- Pending accession, the international temporary admission forms such as the Carnet de Passage de Douanne prescribed in the conventions may already be recognized and use for the clearance of pleasure yacht and aircraft.
- Enter reservation on Recommended Practices 9 and 14.
- Develop systems and issue regulations for Recommended Practices 15, 23, 27, 29, 31, 37 and 37.
- Amend law for Recommended Practices 16 and 17.

Chapter 1: Travellers

Field of application

Recommended Practice 9

P	Travellers should be permitted to make an oral declaration in respect of the goods carried by them. However, the Customs may require a written or electronic declaration for goods carried by travellers which constitute an importation or exportation of a commercial nature or which exceed, in value or quantity, the limits laid down in national legislation.
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N	A simplified customs declaration form in English is currently required of all travelers which is accomplished in the course of accomplishing the disembarkation card. If the amount of goods being brought in is more than \$300 a regular form is required.
C-1	
S-5	Reservation needed since the customs declaration is already accomplished in the course of preparing the mandatory disembarkation card.

Recommended Practice 14

P	A system of flat-rate assessment should be applied to goods declared for home use under the facilities applicable to travellers, provided that the importation is of a non-commercial nature and that the aggregate value or quantity of the goods does not exceed the amounts laid down in national legislation.
N	Section 105-f of the TCCP has a flat rate assessment for returning residents. But this provision does not apply to non-residents. It maybe argued that this Recommended Practice which deals with home use only pertains to returning residents.
C-1	
S-5N	Payment System of Customs remains Payments to the Bank and for some stations Cash Payment to Collecting Officers.

Recommended Practice 15

P	Wherever possible, the use of credit cards or bank cards should be acceptable as a means of payment for services rendered by the Customs and for duties and taxes.
N	Credit card is not acceptable currently but TCCP does not prohibit its use.
C-3	
S-3	Need for a system to accept credit cards from travelers.

Entry

Recommended Practice 16

P	<p>The quantities of tobacco goods, wine, spirits and perfume allowed to be imported free of import duties and taxes by travellers should be not less than:</p> <ul style="list-style-type: none"> • 200 cigarettes or 50 cigars or 250 grams of tobacco, or an assortment of these products of a total weight not exceeding 250 grams; • 2 litres of wine or 1 litre of spirits; • ¼ litre of toilet water and 50 grams of perfume. <p>The facilities provided for tobacco goods and alcoholic beverages may, however, be restricted to persons who have reached a certain age and may not be granted, or may be granted in reduced quantities only, to persons who cross the border frequently or who have been out of the country for less than 24 hours</p>
N	Section 105 of the TCCP allows duty and tax free imports only for wearing apparel, articles of personal adornment, toilet articles, portable tools and instruments, theatrical costumes and similar effects accompanying travelers or tourist or arriving

	within a reasonable time before or after their arrival. The items listed in this RP are not included in the Sec 105g.
C-1	
S-1	Need to amend the law to allow these amounts and also for consistency with RP 17.

Recommended Practice 17

P	In addition to the consumable products allowed to be imported free of import duties and taxes within specified quantitative limits, travellers should be permitted to import, free of import duties and taxes, goods of a strictly non-commercial nature up to an aggregate value of 75 Special Drawing Rights (SDRs). A lower amount may be fixed for persons less than a certain age or for persons who cross the frontier frequently or who have been out of the country for less than 24 hours
N	Under existing legislation, there is no such amount of non-commercial goods brought in by travelers exempted from payment of duties and taxes. For as long as the goods are not personal in nature especially brand new, duties and taxes are legally payable. However, the current passenger baggage declaration form requires the traveler to check either the yes or no box on the question whether or not he is bringing into the country has goods procured abroad in excess of \$300. The implication seems to be that its only when the amount procured abroad is more than \$300 will the traveler be assessed duties and taxes. In actual practice, this amount of imported goods is tolerated and allowed duty and tax free release.
C-1	
S1	Need for amendatory law to legalize the practice

Standard 24

P	Fuel carried in the normal tanks of the means of transport for private use shall be admitted free of import duties and taxes.
N	The country being an archipelago, travelers do not arrive by road transport. A few arrive by pleasure yacht or plane but Customs do not bother with the fuel left in the tanks. Very likely, these modes of transport would have fully used up their fuel by the time they get to the country due to the long distance traveled and in fact would have to load fuel for the continuance of the travel.
C-3	
S-3	

Standard 25

P	The facilities (temporary admission) granted in respect of means of transport for private use shall apply whether the means of transport are owned, rented or borrowed by non-residents and whether they arrive with, before or after the traveller.
N	Travelers intending to call in the country by personal planes and yachts must first notify the country's foreign office or representative office to obtain permission. The foreign office in turn would notify the Customs, Immigration and Quarantine offices for the needed formalities on arrival. The handling by Customs of the traveller's personal transport is similarly with those of commercial transport which procedure

	does not discriminate as to ownership of the mode of transport but the legislation does not say so or is silent as well.
C-3	
S-3	

Recommended Practice 26

P	The Customs should not require a Customs document or security for the temporary admission of non-residents' means of transport for private use.
N	Travelers arriving by boat or aircraft are required to make pre-arrival notification in order that the mode of transport may be placed under guard or some form of customs control. Other than submission of a General Declaration, there are no other Customs documents required such as an entry or a security. However the practice is not supported by legislation.
C-3	
S-3	

Recommended Practice 27

P	Where a Customs document or security is required for the temporary admission of non-residents' means of transport for private use, the Customs should accept standard international documents and securities.
N	The country is not a signatory to any of the Customs Convention on the temporary importation for private use of aircraft and pleasure boats. So should a situation arise when a yacht or an aircraft be required a document or a security to be given temporary admission, these international documents are not recognized by Phil Customs. However, there is nothing that would prevent Customs from making use of these international documents.
C-3	
S-3	

Standard 28

P	Where it is necessary to lodge a temporary admission declaration for temporary admission of non-residents' means of transport for private use, the time limit for temporary admission shall be fixed by reference to the length of the non-resident' s stay in the country, provided that any limit laid down in national legislation is not exceeded.
N	It may become necessary for a temporary admission declaration when the means of transport will be moving in the country away and /or not subject to customs control. Legislation is silent on the length of stay but normally set at not more than 6months because re-export bonds have that time limit.
C-3	
S-3	

Standard 29

P	At the request of the person concerned, and for reasons deemed valid by the Customs, the latter shall extend the period of temporary admission initially fixed for a non-resident's means of transport for private use, provided that any time limit laid down in national legislation is not exceeded.
N	There is no legislation setting time limits to temporary admission so for as long as the reason is valid, the period maybe extended.
C-3	
S-3	

Re-exportation**Standard 31**

P	The Customs shall allow non-residents' temporarily admitted goods to be re-exported through a Customs office other than that through which they were imported.
N	This requires system on top of enabling regulation that BOC currently does not have. No central database which is visible in all customs stations
C-3	
S-3	

Departure**Recommended Practice 37**

P	If security has been given in the form of a cash deposit, provision should be made for it to be repaid at the office of re-exportation, even if the goods were not imported through that office
N	This requires system on top of enabling regulation that BOC currently does not have. No central database which is visible in all customs stations
C-3	
S-3	

Information concerning the Customs facilities**Recommended Practice 39**

P	Information concerning the Customs facilities applicable to travellers should be made available in the official language or languages of the country concerned and in any other language deemed to be useful.
N	No information available covering the standards in the RKC
C-3	
S-3	Draft CMO on Facilities Available to Travelers in a Q&A style

Chapter 2: Postal traffic

N	Current National legislation is silent on all the below standards and practices.
S	<p>MOU with Postal Service and the CAO-CMO must be amended to be clearly aligned and be compliant with Specific Annex J Chapter 2 of the RKC.</p> <ul style="list-style-type: none"> • Principle of speed must be recognized as paramount in the clearance process. • Post Service must be recognized as a regular channel for conveyance of imports and exports and whatever may be the customs procedure utilized. • Define which consignments maybe released by the Postal Service directly without Customs intervention and which one needs regular customs processing.

Clearance of postal items

Standard 3

P	The clearance of postal items shall be carried out as rapidly as possible.
C-3	
S-3	This principle must be expressly provided in the Customs Postal Manual.

a. Customs status of goods

Standard 4

P	The exportation of goods in postal items shall be allowed regardless of whether they are in free circulation or are under a Customs procedure
N	<ul style="list-style-type: none"> • In general, use of Post for exports is allowed • However, regulations must be issued to cover exports thru post of controlled and regulated exports such as those subject to clearances /permits/licenses/authorizations as well as those from customs controlled facilities
C-3	
S-3	

Standard 5

P	The importation of goods in postal items shall be allowed irrespective of whether they are intended to be cleared for home use or for another Customs procedure.
N	<ul style="list-style-type: none"> • There is no restriction on the use of Post for imports for home use or other customs procedures. • However, regulations must be issued to cover imports into customs controlled facilities
C-3	
S-3	

c. Clearance against forms CN22 or CN23 or against a Goods declaration

Standard 9

P	When all the information required by the Customs is available from the CN22 or CN23 and supporting documents, the form CN22 or CN23 shall be the Goods declaration, except in the case of: <ul style="list-style-type: none">• goods having a value exceeding an amount specified in national legislation;• goods which are subject to prohibitions or restrictions or to export duties and taxes;• goods the exportation of which must be certified;• imported goods intended to be placed under a Customs procedure other than clearance for home use. In these cases, a separate Goods declaration shall be required.
C-1	
S-1	These forms not allowable under the law. But this is a good reason to amend the law.

Postal items in transit

Standard 10

P	Postal items shall not be subject to Customs formalities whilst they are being conveyed in transit.
N	Transhipments (Transit involving change of carriers) currently go to some form of Customs formalities. For example a transhipment application form is required of the transportation company. But these formality may be done away with once the needed IT system is set in place.
C-1	
S-1	

Collection of duties and taxes

Standard 11

P	The Customs shall make the simplest possible arrangements for the collection of duties and taxes on the goods contained in postal items.
C-3	
S-3	These forms not allowable under the law. But this is a good reason to amend the law.

Chapter 3: Means of transport for commercial use

Chapter 3 of Annex J deals with the temporary admission procedures of means for commercial transport of goods.

Temporary admission means the Customs procedure under which vehicles, vessels or aircrafts may be introduced into a Customs territory conditionally relieved from payment of import duties and taxes.

The archipelagic geography of the country extremely limits the situations for operators of means of transport to avail of temporary admissions unlike in countries with common land borders where means of transport under multilateral or bilateral arrangements may move within the territory of countries other than the country of registration of the means of transport.

In the case of tourism or exhibition ships calling at different ports in the country, the usual control mechanism is for customs officers to be assigned on board for the duration of the transportations stay in country.

Principles

Recommended Practice 2

P	Customs formalities applicable to means of transport for commercial use should apply equally, regardless of the country of registration or ownership of the means of transport for commercial use, of the country in which they arrived or their country of destination.
C-3	
S-3	Should be included in the general announcement for compliance thru an EO following deposit of instrument of accession.

Arrival

Standard 10

P	The Customs shall reduce, as far as possible, the number of copies of the declaration of arrival required to be submitted to them.
N	Customs is about to implement 100% electronic submission of cargo manifest which will eliminate paper manifest altogether. The data structure of the electronic manifest would already have all the data elements of the general declaration. Opportunity is present to remove altogether the general declaration.
C-1	
S-1	Also, it would improve the quality of the country's compliance to the RKC if a statement of general principles to reduce formalities and documentary requirements to the minimum submission to achieve control objectives.

Standard 11

P	No documents to be produced to or lodged with the Customs in connection with the arrival of means of transport for commercial use shall be required to be legalized, verified, authenticated or previously dealt with by any representatives abroad of the country into which means of transport for commercial use arrive.
N	Legislation is silent but this is actually being observed.
C-3	
S-3	

Subsequent calls in the Customs territory

Standard 12

P	Where means of transport for commercial use call at subsequent places in the Customs territory without intermediate calls in another country, the applicable Customs formalities shall be kept as simple as possible and shall take into account any Customs control measures already taken.
N	Legislation is silent.
C-3	
S-3	

Departure

Standard 13

P	Customs formalities applicable upon the departure of means of transport for commercial use from the Customs territory shall be limited to measures to ensure that: <ul style="list-style-type: none">• where required, a declaration of departure is duly lodged with the competent Customs office;• where appropriate, Customs seals are affixed;• where required for control purposes, specified Customs routes are followed; and• no unauthorized delay occurs in the departure of means of transport for commercial use.
N	Sections 1019 and 1111 provide the requirements for the clearance of vessels and aircrafts respectively for foreign. The conditions and the submissions required are more than what this standard required. There is a need to review the requirements and align the same to international standards and best practices. Other measures may partake of a selective and risk based enforcement measure based on available information.
C-1	
S-3	

Recommended Practice 14

P	The use of declaration of departure forms identical to those prescribed for declaration of arrival forms (general declarations) should be allowed by the Customs provided that their use for purposes of departure is clearly indicated.
N	<ul style="list-style-type: none">• Efforts are currently underway to align these forms to formats prescribed in the Conventions on Facilitation of International Maritime Traffic (country is non-signatory) and the Convention of International Civil Aviation (signatory).• However, while Sections 1111 (departure) and 1105 (arrival) for aircrafts are almost identical to each other, both are different from the maritime forms (Section 1019 for departure and 1004 for arrival which are likewise different from each other).
C-1	

S-1	We should do our best to amend the law to align with this standard.
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Chapter 4: Stores

Strategy

Accept this Annex and issue CMOs on Ship Stores providing for these except for Recommended Practice 4 which is not applicable.

Principles

Recommended Practice 2

P	Customs treatment of stores should apply equally, regardless of the country of registration or ownership of vessels, aircraft or trains.
N	Although the Preamble, Section 2 of Article II, and Section 1 of Article III of the 1987 Constitution mention equality among nations, this particular standard is not directly provided under national legislation.
C-3	Legislation is silent.
S-4	Particularly highlight in the proposed executive order on the general announcement of RKC accession to clearly demonstrate compliance.

b. Documentation

Standard 6

P	When a declaration concerning stores on board vessels arriving in the Customs territory is required by the Customs, the information required shall be kept to the minimum necessary for the purposes of Customs control.
C-3	
S-3	

Recommended Practice 7

P	The quantities of stores which are allowed by the Customs to be issued from the stores held on board should be recorded on the declaration concerning stores produced to the Customs upon arrival of the vessel in the Customs territory and no separate form should be required to be lodged with the Customs in respect thereof.
C-3	
S-3	

Recommended Practice 8

P	The quantities of stores which are supplied to vessels during their stay in the Customs territory should be recorded on any declaration concerning stores which has been required by the Customs.
C-3	
S-3	

Standard 9

P	The Customs shall not require the presentation of a separate declaration of stores remaining on board aircraft.
C-3	
S-3	

c. Issue of stores for consumption**Standard 10**

P	The Customs shall allow the issue of stores for consumption on board during the stay of a vessel in the Customs territory in such quantities as the Customs deem reasonable having regard to the number of the passengers and the crew and to the length of the stay of the vessel in the Customs territory.
C-3	
S-3	

Recommended Practice 11

P	The Customs should allow the issue of stores for consumption on board by the crew while the vessel is undergoing repairs in a dock or shipyard, provided that the stay in a dock or shipyard is considered to be of reasonable duration.
C-3	
S-3	

Recommended Practice 12

P	When an aircraft is to land at one or more airports in the Customs territory, the Customs should allow the issue of stores for consumption on board both during the stay of the aircraft at such intermediate airports and during its flight between such airports.
C-3	
S-3	

d. Customs control**Standard 13**

P	The Customs shall require the carrier to take appropriate measures to prevent any unauthorized use of the stores including sealing of the stores, when necessary.
C-3	
S-3	

Standard 14

P	The Customs shall require the removal of stores from the vessel, aircraft or train for storage elsewhere during their stay in the Customs territory only when they consider it necessary.
C-3	
S-3	

Departure**Recommended Practice 18**

P	No separate declaration concerning stores should be required upon departure of vessels from the Customs territory.
C-3	
S-3	

Standard 19

P	When a declaration is required concerning stores taken on board vessels or aircraft upon departure from the Customs territory, the information required shall be kept to the minimum necessary for the purpose of Customs control.
C-3	
S-3	

Other disposal of stores**Standard 20**

P	Stores on board vessels, aircraft and trains having arrived in the Customs territory shall be allowed: (a) to be cleared for home use or to be placed under another Customs procedure, subject to compliance with the conditions and formalities applicable in each case; or (b) subject to prior authorization by the Customs, to be transferred respectively to other vessels, aircraft or trains in international traffic.
C-3	
S-3	

Chapter 5: Relief Consignments**Recommendations**

- Accept Chapter 5 of Specific Annex J
- Issue Joint Order Among DSWD, DOF and BOC
 - mandating the priority treatment of relief goods during the period of the emergency
 - calling for the observance of the standards and recommended practices and

- putting in place the enabling systems such as release under simplified goods declaration and advance clearance
- institution of controls to prevent abuse such as:
 - Accreditation of Relief Organizations
 - Duration of the Period of the Emergency within which the special procedures maybe availed of
 - Procedure and Controls in the transfer from Customs and DSWD
 - Designation of Warehouses where the goods are to be transferred and processed for distribution

Principles

Standard 2

P	Clearance of relief consignments for export, transit, temporary admission and import shall be carried out as a matter of priority.
N	Legislation is Silent. Include in General Announcement of RKC accession to clearly demonstrate compliance.
C-3	
S-4	

Standard 3

P	In the case of relief consignments the Customs shall provide for : <ul style="list-style-type: none"> • lodging of a simplified Goods declaration or of a provisional or incomplete Goods declaration subject to completion of the declaration within a specified period; • lodging and registering or checking of the Goods declaration and supporting documents prior to the arrival of the goods, and their release upon arrival; • clearance outside the designated hours of business or away from Customs offices and the waiver of any charges in this respect; and • examination and/or sampling of goods only in exceptional circumstances.
N	<ul style="list-style-type: none"> • There is no legislation providing for goods release based on simplified goods declaration which can also be lodged and processed ahead of goods arrival. • There is nothing that expressly prohibits these. • If BOC allows, the System for delivery has either the FIP module or the Informal Entry as the support system.
C-3	
S-3	

Field of Application

Recommended Practice 4

P	Clearance of relief consignments should be granted without regard to the country of origin, the country from which arrived or country of destination.
N	Legislation is silent. Include in General Announcement of RKC accession to clearly demonstrate compliance.
C-3	

S-4	
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Recommended Practice 5

P	In the case of relief consignments any economic export prohibitions or restrictions and any export duties or taxes otherwise payable should be waived.
N	At present there is no export duty. Should in future certain goods be subject to export duty, then legislation must provide exemption when exported as relief goods

Recommended Practice 6

P	Relief consignments received as gifts by approved organizations for use by or under the control of such organizations, or for distribution free of charge by them or under their control, should be admitted free of import duties and taxes and free of economic import prohibitions or restrictions.
N	Exempted under tax code

Specific Annex K: Origin

Chapter 2: Documentary evidence of origin

Requirement of documentary evidence of origin

Recommended Practice 2

P	Documentary evidence of origin should be required only when it is necessary for the application of preferential Customs duties, of economic or trade measures adopted unilaterally or under bilateral or multilateral agreements or of measures adopted for reasons of health or public order.
N	While legislation is silent, practice is compliant with this recommendation. Preferential CO is a supporting document when a preferential rate is applied for. Other situations requiring documentary evidence is on a when required basis. It would be better if regulations clearly state this.
C-3	
S-3	

Recommended Practice 3

P	<p>Documentary evidence of origin should not be required in the following cases:</p> <ul style="list-style-type: none"> • goods sent in small consignments addressed to private individuals or carried in travellers' baggage, provided that such importations are of a non-commercial nature and the aggregate value of the importation does not exceed an amount which shall not be less than US\$100; • commercial consignments the aggregate value of which does not exceed an amount which shall not be less than US\$60; • goods granted temporary admission; • goods carried in Customs transit; • goods accompanied by a regional appellation certificate as well as certain • specific goods, where the conditions to be met by the supplying countries
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	<p>under bilateral or multilateral agreements relating to those goods are such that documentary evidence need not be required.</p> <p>Where several consignments of the kind referred to in (a) or (b) are sent at the same time, by the same means, to the same consignee, by the same consignor, the aggregate value shall be taken to be the total value of those consignments.</p>
N	Rule 14 of CEPT-AFTA exempts less than \$ 200. For many of the above situations however, no legislation has been issued. Its advisable to issue these.
C-3	
S-3	

Recommended Practice 4

P	When rules relating to the requirement of documentary evidence of origin have been laid down unilaterally, they should be reviewed at least every three years to ascertain whether they are still appropriate in the light of changes in the economic and commercial conditions under which they were imposed.
N	No legislation issued.
C-3	
S-3	

Applications and form of the various types of documentary evidence of origin

a. Certificate of origin

Form and content

Recommended Practice 6

P	<p>When revising present forms or preparing new forms of certificates of origin, Contracting Parties should use the model form in Appendix I to this Chapter, in accordance with the Notes in Appendix II, and having regard to the Rules in Appendix III.</p> <p>Contracting Parties which have aligned their forms of certificate of origin on the model form in Appendix I to this Chapter should notify the Secretary General of the Council accordingly.</p>
N	<ul style="list-style-type: none"> • For preferential COs, the agreement prescribes the forms. • For regular COs, CMO27-2004 is silent on the form and it would be advisable to clearly provide in the covering regulation, a form aligned with the format recommended in the RKC.
C-3	
S-3	

Languages to be used

Recommended Practice 8

P	Where the certificate of origin is made out in a language that is not a language of the country of importation, the Customs of that country should not require, as a matter of course, a translation of the particulars given in the certificate of origin.
N	Legislation is Silent.
C-3	
S-3	Only when it will help in the proper assessment and facilitate clearance should translation be required.

Authorities and other bodies empowered to issue certificates of origin

Recommended Practice 10

P	Where goods are not imported directly from the country of origin but are forwarded through the territory of a third country, certificates of origin should be allowed to be drawn up by the authorities or bodies empowered to issue such certificates in that third country, on the basis of a certificate of origin previously issued in the country of origin of the goods.
N	Legislation is Silent but it is advisable to include this in the regulations/orders.
C-3	
S-3	

b. Documentary evidence other than certificates of origin

Recommended Practice 12

P	<p>Where documentary evidence of origin is required, a declaration of origin should be accepted in the following cases:</p> <ul style="list-style-type: none">(a) goods sent in small consignments addressed to private individuals or carried in travellers' baggage, provided that such importations are of a non-commercial nature and the aggregate value of the importation does not exceed an amount which shall not be less than US\$500;(b) commercial consignments the aggregate value of which does not exceed an amount which shall not be less than US\$300. <p>Where several consignments of the kind referred to in (a) or (b) are sent at the same time, by the same means, to the same consignee, by the same consignor, the aggregate value shall be taken to be the total value of those consignments.</p>
N	Legislation is silent. It would be advisable to issue legislation and only if there is ground to suspect the declaration should a formal CO following the retroactive verification route under CMO 27-2004 be resorted to.
C-3	
S-3	

05 February 2007

Her Excellency
GLORIA MACAPAGAL-ARROYO
President
Republic of the Philippines
Malacañan, Manila
Philippines

Subject : Philippine Accession to and Compliance with the Revised International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention or RKC)

Dear Madam President:

We, leaders of industries, stakeholders of the trading community and clients of the Bureau of Customs, have studied the various standards and recommended best practices of the revised International Convention on the Simplification and Harmonization of Customs Procedures, otherwise known as the Revised Kyoto Convention (RKC), which came to force on 03 February 2006, after India became the 40th Contracting Party to ratify the Protocol of Amendments, and strongly believe that the country should adopt and implement a medium and long-term strategy for compliance with the provisions of the Convention, and immediately seal our commitment to foster efficiency, transparency and accountability in Customs administration, while contributing to reduced transaction costs and enhanced trade security, by acceding to the RKC.

Efficient cross border procedures and customs services are critical to the country's efforts to enhance competitiveness, not only in international trade, but also in attracting foreign investments urgently required to generate jobs and other economic opportunities for our people. We are completely convinced that accession to the RKC is an effective and emphatic means of communicating to our global partners the country's steadfast resolve, not only to facilitate trade, but also to continuously improve the Philippine business climate. And, that we are ready to do global business.

We are also confident that the country's accession to RKC and subsequent compliance with its provisions, will most definitely facilitate movement of goods and people and expedite import-export and all other related cross-border transactions, resulting in benefits for everyone: farmers, traders, manufacturers, service enterprises, utilities and, finally, consumers. Equally important, more than just helping provide the Bureau of Customs a reputation of a facilitating and caring organization, compliance with RKC provisions will enhance effectiveness of its regulatory and control functions towards achieving vital customs administration objectives (e.g., revenue generation; safeguarding national security; protecting public health and safety: protection of natural resources and the environment; etc.).

While we believe that the country should try to comply with most if not all of the convention's provisions, we recognize that compliance with some standards and recommended best practices of the Specific Annexes will require amendment of existing laws and the modification of certain administrative policies as well as the development of enabling ICT and other systems activities that may take some time to complete. With accession, the government may have to enter its reservations on certain recommended practices or even temporarily set aside acceptance of whole Annexes or Chapters thereof. In this connection, we respectfully endorse the attached Country Strategy for RKC Compliance which represent the collective view of a multi-sectoral group, for consideration of the Government, under Her Excellency's insightful leadership. And, towards ensuring eventual compliance, we pledge not only our willingness to

undertake persistent advocacy but, where necessary, contribute human and other essential resources required.

We look forward to Her Excellency's immediate and kind response to our recommendation for accession to the RKC.

Very faithfully yours,

PHILIPPINE CHAMBER OF COMMERCE AND INDUSTRY	PHILIPPINE EXPORTERS CONFEDERATION, INC.
FEDERATION OF PHILIPPINE INDUSTRIES, INC.	FEDERATION OF FILIPINO-CHINESE CHAMBERS OF COMMERCE AND INDUSTRIES, INC.
MANAGEMENT ASSOCIATION OF THE PHILIPPINES	MAKATI BUSINESS CLUB
BANKERS ASSOCIATION OF THE PHILIPPINES	CHAMBER OF COMMERCE OF THE PHILIPPINES FOUNDATION
EXPORT DEVELOPMENT COUNCIL NETWORKING COMMITTEE	TASK FORCE ON PHILIPPINE COMPETITIVENESS
PORT USERS CONFEDERATION, INC.	FEDERATION OF ACCREDITED CUSTOMS BROKERS AND FORWARDERS, INC.
CHAMBER OF CUSTOMS BROKERS, INC.	AIRCARGO FORWARDERS ASSOCIATION OF THE PHILIPPINES
ASSOCIATION OF INTERNATIONAL SHIPPING LINES	PHILIPPINE INTERNATIONAL SEAFREIGHT FORWARDERS ASSOCIATION

CONFEDERATION OF TRUCKERS ASSOCIATION OF THE PHILIPPINES	ECOZONE FEDERATION OF FORWARDERS, TRUCKERS AND BROKERS OF THE PHILIPPINES
COMMON BONDED WAREHOUSE OPERATORS, INC.	ASSOCIATION OF OFF-DOCK CFS OPERATORS
DOOR-TO-DOOR CONSOLIDATORS ASSOCIATION OF THE PHILIPPINES	CUSTOMS CHECKERS AND REPRESENTATIVES ASSOCIATION, INC.
PHILIPPINE INTEGRATED IMPORT-EXPORT, INC.	FOREIGN BUYERS ASSOCIATION OF THE PHILIPPINES
SEMI-CONDUCTORS AND ELECTRONICS INDUSTRIES IN THE PHILIPPINES, INC	
FEDERATION OF CUSTOMS BROKERAGE COMPANIES	ASSOCIATION OF TRANSSHIPMENT OPERATORS OF THE PHILIPPINES
	PHILIPPINE CHAMBER OF AIR EXPRESS OPERATORS



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS
MANILA 1099

05 February 2007

Honorable MARGARITO B. TEVES

Secretary
Department of Finance
Roxas Boulevard, Manila
Philippines

Subject : Philippine Accession To and Compliance With the Revised International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention or RKC)

Dear Secretary Teves,

The Bureau of Customs respectfully recommends the country's accession to the Revised Kyoto Convention and the adoption and implementation of the attached Country Strategy for RKC Compliance which was formulated by a multi-sectoral group consisting of representatives of business organizations and the academe, and with the active involvement of BOC officials and personnel. It will be recalled that the country's accession to and compliance with the RKC was one of the major recommendations submitted to the President late last year by the Summit on National Competitiveness.

In 1973, the Customs Cooperation Council (CCC), the predecessor of the World Customs Organization (WCO), adopted the International Convention on the Simplification and Harmonization of Customs Procedures, otherwise known as the "Kyoto Convention" aimed at simplifying and harmonizing customs procedures. The Kyoto Convention came into force in 1974 with 62 original Contracting Parties.

After the Kyoto Convention came into force, the pattern of and environment for international trade underwent dramatic changes as a result of increased globalization of trade, rapid growth in international cargo, severe competition for foreign investments, establishment of the World Trade Organization (WTO) and regional trading arrangements such as APEC and AFTA, reduction of tariffs and elimination of non-tariff barriers, dynamic growth and development of ICT technology and advancement in e-commerce and increased focus on trade security. Consequently, with traditional Customs administration practices and procedures becoming regarded as non-tariff barriers, WTO called for simplification and harmonization of Customs procedures as a key to trade facilitation. In June 1999, the WCO responded with the adoption by 114 customs administrations attending its 94th Session of the Revised Kyoto Convention which reflects the economic and technological changes and incorporates best practices of member administrations. The RKC came into force 03 February 2006, three months after India became the 40th original Contracting Party to sign/ratify the Protocol of Amendment. As a result of the RKC's coming into force, it is now open for accession by countries who were not Contracting Parties to the original Kyoto Convention.

RKC is designed to promote international trade by prescribing modern, simplified and harmonized Customs procedures, as well as standards and best practices which will enable Customs to respond to major changes in business and administrative methods and techniques towards facilitating and reducing

the cost of cross-border transactions, fostering administrative transparency and efficiency, and enhancing trade security, without sacrificing achievement of customs objectives of revenue generation and protection of national security, public health and safety, natural resources and the environment.

Compliance with the RKC will specifically and directly benefit traders and manufacturers because of improved facilitation and reduced cost; shippers and transport operators will appreciate uniform Customs controls and quicker movement of cargoes and people; and the government will realize increased border security and enhanced revenue collection efficiency.

The following are some of the specific advantages derived from trade with RKC compliant countries:

- Harmonized customs procedures instead of 140 disparate national customs procedures;
- Reduced time and cost of clearing customs;
- Greater understanding of compliance requirements leading to increased transparency and predictability in customs transactions and elimination of discretionary treatment and application of rules and regulations
- Implementation of special procedures for low-risk importers;
- Reduced opportunities for extortion of facilitation/grease, payments, thereby paving the smooth transition to increased transparency and automation.

Recognizing the benefits that will result from accession and compliance with the RKC, the Bureau of Customs convened a Kyoto Convention Management Team (KCMT) to undertake the following:

1. Analyze applicability of RKC provisions to the Philippines, taking into consideration the country's development status and needs;
2. Determine which standards, transitory standards and recommended practices in the RKC General and Specific Annexes vis-à-vis the country's existing National Legislation is compliant or not compliant with,
3. Formulate measures to be undertaken to make Philippine National Legislation compliant with said standards, transitory standards and recommended practice,
4. Recommend how the Philippines should accede to the RKC (i.e., identify which Specific Annexes should be immediately accepted and those the country should indicate reservations on).

The KCMT, assisted by a multi-sectoral group consisting of representatives of private sector organizations and the academe, has validated that compliance with the provisions of the RKC will deliver the benefits enumerated above. The KCMT also recommends that the Philippines accede to the RKC to signify and seal the country's commitment to comply with its provisions. By acceding, the Philippines will be sending a clear message to both the international trade community and governments around the world that the Philippines stands firmly behind customs procedures that facilitate the secure movement of legitimate trade across national borders and that the public and private sector truly can work together to facilitate trade and that trade and security are not mutually exclusive, and will present a significant step forward in the promotion of economic growth, national security, and customs integrity at both the national and international levels. Acceding to the RKC will also provide the following advantages:

- Prevent passage or issuance of National Legislation (revision of Customs Code, Issuance of PDs and EOs and Administrative Orders, CAOs and CMOs) that are against the principles and provisions of the RKC.
- Establishment of a solid foundation for reforming and strengthening the country's legislative base, a very important first step in reforming the BOC and related institutions. (Note:

Eliminating the gaps between RKC and the existing National Legislation can be the Action Program of a Joint Business-Congressional-DOF-BOC Reform Agenda.)

- Establishment of a benchmark for assessing the status of the country's trade efficiency and competitiveness.

We are also convinced that the country's accession to the RKC is the most effective and also least expensive way of declaring to the global community that the country's business climate and environment favorably compares with the best in the world.

We urgently wish to make the Philippines to be the first ASEAN country to accede to the Revised Kyoto Convention. In this connection, we believe that we can immediately comply with accession requirements through acceptance of the

1. Body of the Convention as amended,
2. General Annex,
3. Specific Annex A - Arrival of Goods in a Customs Territory: Chapter 2 – Temporary Storage of Goods
4. Specific Annex B – Importation:
 - a. Chapter 1 – Clearance for Home Use
 - b. Chapter 2 – Re-importation in the Same State
 - c. Chapter 3 – Relief from Import Duties and Taxes.
5. Specific Annex C – Exportation: Chapter 1 – Outright exportation.
6. Specific Annex E – Transit :
 - a. Chapter 1 – Customs Transit
 - b. Chapter 2 – Transshipment
 - c. Chapter 3 – Carriage of Goods Coastwise
7. Specific Annex F – Processing: Chapter 3 – Drawback
8. Specific Annex J- Special Procedures:
 - a. Chapter 1 - Travellers
 - b. Chapter 2 - Postal Traffic
 - c. Chapter 4 – Stores
 - d. Chapter 5 – Relief Consignments
9. Specific Annex K – Origin

On the other hand, inasmuch as acceptance will require careful in-depth studies and consultations with various stakeholders and/or amendment of existing legislations, we believe we should defer acceptance of the following Specific Annexes and Chapters:

1. Specific Annex A - Arrival of Goods in a Customs Territory: Chapter 1 – Formalities prior to the lodgement of the Goods Declaration
2. Specific Annex D – Customs Warehouses and Free Zones
3. Specific Annex F – Processing:

- a. Chapter 1 – Inward Processing
 - b. Chapter 2 – Outward Processing
 - c. Chapter 4 – Processing of goods for home use
4. Specific Annex G – Temporary Admission
 5. Specific Annex H – Offences
 6. Specific Annex J – Special Procedures: Chapter 3 – Means of transport for commercial use.

For the same reasons referred to in the preceding paragraph, we believe that the country should register reservations on the following Recommended Practices in Specific Annexes we recommended acceptance of:

1. Specific Annex A - Arrival of Goods in a Customs Territory:
 - a. Chapter 2 – Temporary Storage of Goods
 - Recommended Practice 10
2. Specific Annex B – Importation:
 - a. Chapter 1 – Clearance for Home Use
 - Recommended Practice 2
 - b. Chapter 2 – Re-importation in the Same State
 - Recommended Practice 6 and
 - Recommended Practice 7,
3. Specific Annex E – Transit :
 - a. Chapter 3 – Carriage of Goods Coastwise
 - Recommended Practice 4
 - Recommended Practice 5
 - Recommended Practice 6
 - Recommended Practice 8
 - Recommended Practice 9
 - Recommended Practice 15
 - Recommended Practice 16
4. Specific Annex F – Processing:
 - a. Chapter 3 – Drawback
 - Recommended Practice 3
 - Recommended Practice 5
 - Recommended Practice 6
 - Recommended Practice 9
 - Recommended Practice 10
5. Specific Annex J- Special Procedures:
 - a. Chapter 1 - Travellers
 - Recommended Practice 9
 - Recommended Practice 14
 - Recommended Practice 16
 - Recommended Practice 17

Thank you very much for the Secretary's kind consideration of the BOC recommendations.

Very truly yours,

NAPOLEON L. MORALES
Commissioner

06 February 2007

Her Excellency
GLORIA MACAPAGAL-ARROYO
President
Republic of the Philippines
Malacañan, Manila

Through: **Honorable ALBERTO G. ROMULO**
Secretary, Department of Foreign Affairs

Subject : Department of Finance Endorsement of the BOC Recommendation on the Adoption and Implementation of the National Strategy for Accession to and Compliance with the Revised International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention or RKC)

Madam President:

The Department of Finance is respectfully endorsing, for the kind consideration of the President, the attached letter of BOC Commissioner Napoleon L. Morales dated 05 February 2007 on the above-mentioned subject, which was submitted to me during this morning's ceremony commemorating the 105th Anniversary of the founding of the Bureau. (Attachment A)

The BOC recommendation is overwhelmingly supported by various relevant private sector business organizations, as indicated in their joint letter to the President dated 05 January 2007, which was presented to the DOF Undersecretary Gil Beltran during the National Summit on the Revised Kyoto Convention yesterday. (Attachment B)

Hoping that the President would favorably consider the BOC recommendation and the DOF endorsement of it, we have taken the liberty of preparing and submitting, for the President's further consideration, the following draft documents:

- Instrument of Accession (Attachment C);
- President's Letter to the Philippine Senate endorsing the Instrument of Accession for confirmation (Attachment D); and
- Summary of Applicability and Gap Analysis as support document to the Instrument for Accession (Attachment E).

We firmly believe that accession to and compliance with the RKC will be hailed as one of the most important milestones in the relentless efforts of President Arroyo's Administration to put the country prominently back in the global map of competitiveness in international trade and investments.

Very truly yours,

MARGARITO B. TEVES
Secretary

INSTRUMENT OF ACCESSION

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

KNOW YE, that whereas, the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) was adopted in Kyoto on 18 May 1973 and entered into force on 25 September 1974;

WHEREAS, on 3 February 2006, the amended Convention and the Protocol of Amendment to the Convention, which was done in Brussels on 26 June 1999, entered into force three months after the 40th Contracting Party ratified the Protocol and the amended Convention;

WHEREAS, the Revised Kyoto Convention aims to (a) eliminate divergence between the Customs procedures and practice of contracting parties that can hamper international trade and other international exchanges, (b) meet the needs of international trade and the Customs for facilitation, simplification and harmonization of Customs procedures and practices, (c) ensure appropriate standards of Customs control; and (d) enable the Customs to respond to major changes in business and administrative methods and techniques;

WHEREAS, Article 8 (1) of the Convention provides that “any Member of the Council and any Member of the United Nations or its specialized agencies may become a Contracting Party to this Convention by: (a) signing it without reservation of ratification; (b) depositing an instrument of ratification after signing it subject to ratification; or (c) acceding to it.”

WHEREAS, the Philippines is a member of the World Customs Organization Council, and also of the United Nations, and thereby may become a Contracting Party to the Revised Kyoto Convention by acceding to it.

WHEREAS, the Philippines shall observe and comply with the terms of its accession and apply the same within the bounds of the territory within which the Government of the Philippines exercises sovereignty.

NOW, THEREFORE, be it known that I, **GLORIA MACAPAGAL-ARROYO**, President of the Republic of the Philippines, after having seen and considered the aforementioned International Convention on the Simplification and Harmonization of Customs Procedures, as amended, do hereby accept, accede to and agree to be bound by the Body of the Convention, and any amendments thereto, General Annex and the following Specific Annexes and/or Chapters of Specific Annexes, subject to reservations on certain Recommended Practices enumerated in the succeeding paragraph:

- Specific Annex A - Arrival of Goods in a Customs Territory
- Specific Annex B – Importation
- Specific Annex C – Exportation
- Specific Annex E – Transit
- Specific Annex F – Processing: Chapter 3 – Drawback
- Specific Annex J- Special Procedures:
 - Chapter 1 - Travellers
 - Chapter 2 - Postal Traffic
 - Chapter 4 – Stores
 - Chapter 5 – Relief Consignments
- Specific Annex K – Origin

BE IT FURTHER KNOWN THAT, considering that there are existing laws and/or policies which are in direct conflict with some Recommended Practices in Specific Annexes and that in-depth

rethinking of policies and/or amendment of existing laws will be required for acceptance and compliance, we hereby make reservations on acceding to the following:

- Specific Annex A - Arrival of Goods in a Customs Territory:
Chapter 1 – Formalities Prior to the Lodgement of the Goods
 - Recommended Practice 9
 - Recommended Practice 10
 - Recommended Practice 12
Chapter 2 – Temporary Storage of Goods
 - Recommended Practice 10

- Specific Annex B – Importation
Chapter 1 – Clearance for Home Use
 - Recommended Practice 2
Chapter 2 – Re-importation in the Same State
 - Recommended Practice 6 and
 - Recommended Practice 7

- Specific Annex E – Transit, Chapter 3 – Carriage of Goods Coastwise:
 - Recommended Practice 4
 - Recommended Practice 5
 - Recommended Practice 6
 - Recommended Practice 8
 - Recommended Practice 9
 - Recommended Practice 15
 - Recommended Practice 16

- Specific Annex F – Processing, Chapter 3 - Drawback
 - Recommended Practice 3
 - Recommended Practice 5
 - Recommended Practice 6
 - Recommended Practice 9
 - Recommended Practice 10

- Specific Annex G – Temporary Admission, Chapter 1 – Temporary Admission
 - Recommended Practice 9
 - Recommended Practice 10
 - Recommended Practice 14
 - Recommended Practice 19

- Specific Annex J- Special Procedure, Chapter 1 – Travellers :
 - Recommended Practice 9
 - Recommended Practice 14
 - Recommended Practice 16
 - Recommended Practice 17

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

GIVEN under my hand at the City of Manila, on this _____ day of _____ in the year of Our Lord, two thousand seven.

MALACAÑAN PALACE

MANILA

February 2007

The HONORABLE MEMBERS

Senate

Through: **Senate President MANUEL VILLAR**

Ladies and Gentlemen:

I have the honor to forward, herewith, a copy of the Instrument of Accession to the Revised International Convention on the Simplification and Harmonization of Customs Procedures, otherwise known as the Revised Kyoto Convention (RKC), which I signed this ____ day of _____, 2007.

With this Instrument of Accession to the RKC, the Philippines, agrees to accept, comply with and be bound to, within the territories the Philippines exercises sovereignty, following:

1. Body of the Revised Kyoto Convention, as amended;
2. General Annex;
3. Specific Annex A : Arrival of Goods in a Customs Territory;
 - a. Chapter 1 – Formalities Prior to the Lodgement of the Goods Declaration
 - b. Chapter 2 – Temporary Storage of Goods
4. Specific Annex B : Importation:
 - a. Chapter 1 – Clearance for Home Use
 - b. Chapter 2 – Re-importation in the Same State
 - c. Chapter 3 – Relief from Import Duties and Taxes.
5. Specific Annex C : Exportation , Chapter 1 – Outright Exportation.
6. Specific Annex E : Transit :
 - a. Chapter 1 – Customs Transit
 - b. Chapter 2 – Transshipment
 - c. Chapter 3 – Carriage of Goods Coastwise
7. Specific Annex F : Processing , Chapter 3 – Drawback
8. Specific Annex G : Temporary Admission , Chapter 1 – Temporary Admission
9. Specific Annex J : Special Procedures:
 - a. Chapter 1 – Travellers
 - b. Chapter 2 -- Postal Traffic
 - c. Chapter 4 – Stores
 - d. Chapter 5 – Relief Consignments

10. Specific Annex K : Origin

On the other hand, considering that acceptance will require careful in-depth studies and consultations with various stakeholders and/or amendment of existing legislations, through the Instrument of Accession, we are making reservations on the following Specific Annexes and/or Chapters and/or Recommended Practices, thereof:

1. Specific Annex A : Arrival of Goods in a Customs Territory:
 - a. Chapter 1 – Formalities Prior to the Lodgement of the Goods Declaration
 - 1) Recommended Practice 9
 - 2) Recommended Practice 10
 - 3) Recommended Practice 12
 - b. Chapter 2 – Temporary Storage of Goods , Recommended Practice 10
2. Specific Annex B – Importation
 - a. Chapter 1 – Clearance for Home Use, Recommended Practice 2
 - b. Chapter 2 – Re-importation in the Same State
 - 1) Recommended Practice 6 and
 - 2) Recommended Practice 7,
3. Specific Annex E – Transit :
 - a. Chapter 3 – Carriage of Goods Coastwise
 - 1) Recommended Practice 4
 - 2) Recommended Practice 5
 - 3) Recommended Practice 6
 - 4) Recommended Practice 8
 - 5) Recommended Practice 9
 - 6) Recommended Practice 15
 - 7) Recommended Practice 16
4. Specific Annex F – Processing , Chapter 3 – Drawback
 - a. Recommended Practice 3
 - b. Recommended Practice 5
 - c. Recommended Practice 6
 - d. Recommended Practice 9
 - e. Recommended Practice 10
5. Specific Annex G – Temporary Admission , Chapter 1 - Temporary Admission
 - a. Recommended Practice 9
 - b. Recommended Practice 10
 - c. Recommended Practice 14
 - d. Recommended Practice 19
6. Specific Annex J - Special Procedures , Chapter 1 - Travellers
 - a. Recommended Practice 9
 - b. Recommended Practice 14
 - c. Recommended Practice 16
 - d. Recommended Practice 17

RKC is designed to promote international trade by prescribing modern, simplified and harmonized Customs procedures, as well as standards and best practices which will enable Customs to respond to major changes in business and administrative methods and techniques towards facilitating and reducing the cost of cross-border transactions, fostering administrative transparency and efficiency, and enhancing trade security, without sacrificing achievement of customs objectives of revenue generation and protection of national security, public health and safety, natural resources and the environment.

Compliance with the RKC will specifically and directly benefit traders and manufacturers with improved facilitation and reduced cost; shippers and transport operators will appreciate uniform Customs controls and quicker movement of cargoes and people; and the government will realized increased border security and enhanced revenue collection efficiency. Trading with RKC compliant countries will generate with the following specific advantages:

- Harmonized customs procedures instead of 140 disparate national customs procedures;
- Reduced time and cost of clearing customs;
- Greater understanding of compliance requirements leading to increased transparency and predictability in customs transactions and elimination of discretionary treatment and application of rules and regulations
- Implementation of special procedures for low-risk importers;
- Reduced opportunities for extortion of facilitation/grease, payments, thereby paving the smooth transition to increased transparency and automation.

By acceding, the Philippines will be sending a clear message to both the international trade community and governments around the world that the Philippines stands firmly behind customs procedures that facilitate the secure movement of legitimate trade across national borders and that the public and private sectors truly can work together to facilitate trade and that trade and security are not mutually exclusive, and will present a significant step forward in the promotion of economic growth, national security, and customs integrity at both the national and international levels. Acceding to the RKC will also provide the following advantages:

- Prevent passage or issuance of National Legislation (revision of Customs Code, Issuance of PDs and EOs and Administrative Orders, CAOs and CMOs) that are against the principles and provisions of the RKC.
- Establishment of a solid foundation for reforming and strengthening the country's legislative base, a very important first step in reforming the BOC and related institutions. (Note: Eliminating the gaps between RKC and the existing National Legislation can be the Action Program of a Joint Business-Congressional-DOF-BOC Reform Agenda.)
- Establishment of a benchmark for assessing the status of the country's trade efficiency and competitiveness.

The country's accession to the RKC is the most effective way of declaring to the global community that the country's business climate and environment favorably compares with the best in the world.

In view of the foregoing, pursuant to Section 21, Article VII of the Constitution, the Instrument of Accession to the Revised Kyoto Convention, together with the Body of the Convention, General Annex and Specific Annexes recommended for acceptance by the Philippines, are hereby submitted to the Senate for concurrence.

Very truly yours,

GLORIA MACAPAGAL-ARROYO

President

SENATE

P.S. RES. NO. _____

RESOLUTION

CONCURRING IN THE ACCESSION TO THE REVISED INTERNATIONAL CONVENTION ON THE SIMPLIFICATION AND HARMONIZATION OF CUSTOMS PROCEDURES

WHEREAS, the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) was adopted in Kyoto on 18 May 1973 and entered into force on 25 September 1974;

WHEREAS, the amended Convention and the Protocol of Amendment to the Convention, which was done in Brussels on 26 June 1999, has entered into force on 3 February 2006, three months after the 40th Contracting Party ratified the Protocol and the amended Convention;

WHEREAS, the Revised Kyoto Convention aims to (a) eliminate divergence between the Customs procedures and practice of contracting parties that can hamper international trade and other international exchanges, (b) meet the needs of international trade and the Customs for facilitation, simplification and harmonization of Customs procedures and practices, (c) ensure appropriate standards of Customs control; and (d) enable the Customs to respond to major changes in business and administrative methods and techniques;

WHEREAS, the Revised Kyoto Convention is designed to promote international trade by prescribing modern, simplified and harmonized Customs procedures, as well as standards and best practices which will enable Customs to respond to major changes in business and administrative methods and techniques towards facilitating and reducing the cost of cross-border transactions, fostering administrative transparency and efficiency, and enhancing trade security, without sacrificing achievement of customs objectives of revenue generation and protection of national security, public health and safety, natural resources and the environment.

WHEREAS, compliance with the Revised Kyoto Convention will specifically and directly benefit traders and manufacturers because of improved facilitation and reduced cost, shippers and transport operators will appreciate uniform Customs controls and quicker movement of cargoes and people and the government will realized increased border security and enhanced revenue collection efficiency, and that trading among Revised Kyoto Convention compliant countries will provide the following specific advantages:

- Harmonized customs procedures instead of 140 disparate national customs procedures;
- Reduced time and cost of clearing customs;
- Greater understanding of compliance requirements leading to increased transparency and predictability in customs transactions and elimination of discretionary treatment and application of rules and regulations
- Implementation of special procedures for low-risk importers;
- Reduced opportunities for extortion of facilitation/grease, payments, thereby paving the smooth transition to increased transparency and automation.

WHEREAS, our accession to the Revised Kyoto Convention will signify and seal the country's s commitment to comply with its provisions, and will send a clear message to both the international trade community and governments around the world that our country stands firmly behind customs procedures that facilitate the secure movement of legitimate trade across national borders and that the public and private sector truly can work together to facilitate trade and that trade and security are not mutually

exclusive, and will present a significant step forward in the promotion of economic growth, national security, and customs integrity at both the national and international level.

WHEREAS, the President of the Philippines finds it desirable to accede to the Revised Kyoto Convention, subject to certain reservations, and has accordingly submitted to the Senate for concurrence in accordance with Section 21, Article VII of the Constitution of the Philippines: Now, therefore, be it

RESOLVED, as it is hereby resolved, That the Senate concur, as it hereby concurs, in the accession by the President of the Philippines, subject to specific reservations contained in the Instrument of Accession, to the revised International Convention on the Simplification and Harmonization of Customs Procedures, otherwise known as the Revised Kyoto Convention.