INTRODUCTION

Institutionalizing and Democratizing Policy Making: The Role of Global Civil-Society Movements in the Philippines

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The United Nations Research Institute for Social Development-Philippine Research Team (UNRISD-PRT) policy report consists of five policy papers emanating from the study of five contemporary civil-society movements. These are the following: 1) campaigns for debt relief, the case study of which is the Freedom from Debt Coalition (FDC); 2) movement to change international trade rules and barriers, the case study of which is the Stop the New Round Coalition (SNR); 3) global taxation initiative, the focus of which is the advocacy for the Tobin tax; 4) international anti-corruption movement, the case study of which is the Transparency Accountability Network (TAN); and 5) the movement on fair trade. These policy papers are a product of the UNRISD-PRT research project "Global Civil-Society Movements: Dynamics in International Campaigns and National Implementation." A common theme that has emerged in the papers is the need to democratize and institutionalize policymaking at the national and international levels to be in tune with the needs of the majority. At the microlevel, the concern is that despite the country's transition from authoritarianism to democracy, much of the policymaking process in the country is still very much left in the hands of the elites. It was hoped that globalization would help democratize decision making, but it has also failed to do this. At the macrolevel, this is also a major concern precisely because the majority is shut out of the decision-making process. Moreover, one also confronts the challenge of how to increase the options for a developing country like the Philippines in an era of globalization so that it would not only compete internationally but also be less vulnerable to external forces.

The policy papers produced by the five case studies yielded the following proposals:

For the campaign on debt relief, the proposal is to support the Freedom from Debt Coalition's (FDC) role in the proposed Congressional Commission on Debt. This is to ensure the active involvement of social movements in the "freedom-from-debt advocacy." For the movement to change international trade rules and regulations, the proposal is to look into the feasibility and viability of the establishment of a Philippine Trade Representative Office to pave the way for transparency and civil-society participation in international trade negotiations. The policy paper for the anti-corruption movement, on the other hand, proposes to

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optimize the use of the United Nations Convention against Corruption (UNCAC) in the prevention, criminalization, international cooperation, and asset recovery with regard to corruption cases. As for the advocacy on the Tobin tax, the policy paper proposes to look into the different strategies to insulate the domestic economy from volatile capital flows and other negative externalities. Lastly, the policy paper for the fair trade movement proposes the creation of a quasi-government agency specifically tasked to integrate fair trade, as defined by the movement, in state policies. This quasi-government body will have the flexibility to receive direct support from government, while maintaining the discretion to disengage from government bureaucracies that hinder the effective implementation of programs and projects.

Strengthening the Freedom from Debt Coalition's Role in the Proposed Congressional Commission on Debt

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STATEMENT OF THE PROBLEM

In the proposed Congressional Commission on Debt,[2] the main challenge is how to assure the "active involvement and participation in all activities" of people's organizations that engage in freedom-from-debt advocacy, like the Freedom from Debt Coalition (FDC), as stipulated in Section 5, (e) of House Joint Resolution (HJR) 2 and Senate Joint Resolution (SJR) 1[3] of the Thirteenth Congress of the Republic of the Philippines.

OBJECTIVE

To suggest possible amendments to SJR 1 to make it more responsive to Article 16, Section 13, of the 1987 Philippine Constitution, which states, "The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms."

BACKGROUND

HJR 2 and SJR 1 of the Thirteenth Congress of the Republic of the Philippines intend to create a Congressional Commission on Debt. Being a congressional commission, its membership is limited to the following: the chairperson of the Senate Committee on Finance, the chairperson of the House Committee on Appropriations, six members of the Senate and six members of the House of Representatives to be designated by the Senate President and the Speaker of the House of Representatives, respectively. It was also provided that two of the six members from the Senate and the House of Representatives "shall represent the minority as designated by the Minority Leader of each House."

Section 3 of HJR 2 states that the Congressional Commission on Debt "shall, among other things, critically review and assess debt policies, strategies and programs." The proposed commission has the following objectives:

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[2] HJR 2, Joint Resolution Creating a Congressional Commission to Review and Assess the Debt Policies, Strategies and Programs of the Philippines, Conduct a Public Audit of All Loans Acquired, Including Assumed and Contingent Liabilities, Validate the Utilization of Loan Proceeds, and the Payments Made Thereon, and Recommend Policies and Strategies to Reduce Debt Service as well as Institutional and Infrastructural Measures to Ensure Sound Fiscal and Monetary Status of the National Government Principally through Effective Debt Management.

[3] Being a counterpart measure, SJR1 bears the same title and content as that of HJR 2.

a. Full examination and prioritization of the government's goals and objectives with respect to public debt, including assumed and contingent liabilities
b. Reassessment of the rationale and effects of automatic appropriation for debt service
c. Encouragement of the active involvement of the private sector in the formulation and implementation of debt management strategies, policies, and program
d. Adoption of both traditional and innovative strategies on debt-service reduction and the liquidation of the debt stock

Voting 129 to 0, the Philippine House of Representatives passed on 21 August 2004 HJR 2, the Congressional Commission on Debt resolution authored principally by Rep. Edcel Lagman. On 23 August 2004, the House of Representatives transmitted the joint resolution to the Philippine Senate.

Sen. Rodolfo Biazon filed on 16 August 2004 the counterpart Senate joint resolution, SJR 1. On 21 August 2004 the proposed resolution was referred to the Senate Committee on Finance and Economic Affairs, chaired respectively by Sen. Franklin Drilon and Sen. Mar Roxas. To date, no action has been taken on the SJR 1.

PEOPLE'S PARTICIPATION IN CRAFTING THE NATION'S DEBT POLICIES, STRATEGIES, AND PROGRAMS

The last attempt to shed a degree of democratic participation, policy coherence, and transparency on the nation's debt, which currently stands at PHP 4,701.2 million, was when Republic Act (RA) 6724[4] took effect on 17 April 1989. RA 6724 created the Joint Legislative-Executive Foreign Debt Council. The council was last convened in 1992 by President Fidel Ramos. The Joint Legislative-Executive Foreign Debt Council has become inactive as evidenced by its lack of proposed expenditure for fiscal years 1999-2006.

In proposing measures that will strengthen the people's involvement and participation in the proposed Congressional Commission on Debt, it is instructive to look at what the Joint Legislative-Executive Foreign Debt Council aimed to achieve, in particular Section 3 (h): "To facilitate nationwide consultations and public hearings on the foreign debt." This particular provision carries in intent the spirit of Article 16, Section 13, of the 1987 Philippine Constitution.

In the past, this provision has provided FDC a toehold in the Joint Legislative-Executive Foreign Debt Council. FDC had participated actively in its consultations and public hearings. The hearings and consultations that were organized by the Joint Legislative-Executive Foreign Debt Council nationwide also gave FDC an opportunity to bring its positions and advocacies on the nation's debt to the local level. Indoors, economist and public finance experts from FDC debated with the council; outside, FDC held pickets and demonstrations.[5]

The opening provided by RA 6724 helped FDC, especially during its early years (1988-1992), to establish itself as the leading coalition on the issue of national

[4] RA 6724, An Act Organizing A Joint Legislative-Executive Foreign Debt Council, Defining Its Objectives, Powers, And Functions, Appropriating Funds Therefor, And For Other Purposes.
[5] Leonor M. Briones (former FDC president), interview by Joel F. Ariate Jr., digital recording, 28 June 2006.

debt and debt-related matters. FDC's active participation in the Joint Legislative-Executive Foreign Debt Council can even be said to have inspired Rep. Socorro O. Acosta to file House Bill (HB) 3565[6] during the Ninth Congress. Rep. Acosta's bill, filed on 9 October 1992, wanted to amend the composition of the Joint Legislative-Executive Foreign Debt Council. She wanted to include two professionals from nongovernment organizations (NGOs) that have made in-depth studies on the foreign-debt problem. Unfortunately, after being filed, nothing was heard anymore about HB 3565.

Compared to RA 6724, HJR 2 and SJR 1 are not as explicit on how people's organizations can gain access to the congressional commission. The joint resolutions have both managed to neglect the previous effort of RA 6724 and HB 3565 to actively engage the people in crafting programs, policies, and strategies regarding the nation's debt.

SUGGESTED AMENDMENTS TO SJR NO. 1

Bearing in mind the intent of Article 16, Section 13, of the 1987 Philippine Constitution, RA 6724, HB 3565, and how debt commissions have fared in other countries, in particular in Latin America, the following amendments to the SJR 1 now pending in the Senate are proposed:

A. In its section detailing the Congressional Commission on Debt's purpose and objectives, Section 3 (c) should read:

Encouragement of the active involvement of the private sector, in particular *people's organizations which have made in-depth studies on the nation's debt,* in the formulation and implementation of debt management strategies, policies and programs;

1. The broadness of the term "private sector" might result in having the commission consult any actor from the private sector, which might not even have the requisite experience in research and advocacy concerning the nation's debt. Unqualified actors from the private sector might crowd out organizations like FDC which, at the outset, was the kind of organization that HJR 2 had in mind. In the *House Journal* bearing the floor deliberation for HJR 2, Rep. Edcel Lagman, the joint resolution's main author, was recorded arguing that "transparency would be upheld and ascertained in the commission's performance of functions and exercise of powers. He pointed out that *the private sector, including competent nongovernment organizations* such as FDC, which has been studying the debt problem for many decades now, will be made to participate in the public hearings that it will conduct"[7] (emphasis added).

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[6] House Bill 3565, An Act Strengthening the Membership of the Joint Legislative-Executive Foreign Debt Council, Amending for the Purpose Section Six of Republic Act No. 6724.

[7] *Journal of the House*,No. 17, 13 and 14 September 2004, http://www.congress.gov.ph/legis/print_journal.php?congress = 13&id = 18, accessed on 06 October 2006.

2. The inclusion of the phrase "people's organizations which have made in-depth studies on the nation's debt" will also make clear and precise the provision in Section 5 (e), which states that "concerned nongovernment organizations shall be accorded preferential and regular representation to guarantee their active involvement and participation in all activities of the Commission."
3. In countries like Ecuador, Argentina, Peru, and Brazil, representatives of people's organizations that deal with the issue of national debt are given important roles in their debt commissions. In Ecuador, for example, a representative from the Jubilee Network sits as a member in the debt commission itself. In the case of the Philippines, it is understandable that the members of the commission be limited to the members of the Congress since it is a congressional commission. A limitation that can be remedied by having the specific clause mentioned above integrated in the SJR 1.

B. In its section detailing the Congressional Commission on Debt's duties and functions (Section 4), an additional item should be added: *To facilitate nationwide consultations and public hearings on the country's debt policies, strategies, and programs.*

1. There is a provision in Section 5 (c) for the commission to conduct hearings and a public audit. However, this provision is insufficient to guarantee maximum participation from people's organizations. The hearings which the commission might conducted could not be public, and could be limited only to the government's policy elite. Without any specific provision on the location and extent of the hearing, the commission might merely seek the comfort of its Manila-based office to the detriment of those from the provinces who would like to seek audience with the commission but with limited resources.

C. Section 5 (c) should be amended to read: "Conduct hearings and a public audit of all loans and receive testimonies, reports and technical advice. *Provided, that all hearings related to the public audit must be also public.*

1. Making the hearings on the pubic debt audit public will "provide a powerful opportunity to hold the executive to account by testing the audit results against the testimony of executive officials and other experts. Hearings also can build public interest in important policy issues. In these ways, hearings can begin to create constituencies for change within parliament, civil society and the media."[8]

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[8]Warren Krafchik, "What role can civil society and parliament play in strengthening the external auditing function?" http://www.internationalbudget.org/auditorgeneral.htm, accessed on 5 October 2006.

Transparency and Civil-Society Participation in International Trade Negotiations: Will a Philippine Trade Representative Office Pave the Way?

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Like most developing countries, international trade has been a major plank of the Philippine government in its pursuit of macroeconomic growth and development. It is currently a member of two multilateral forums: the World Trade Organization (WTO), the only global international organization dealing with the rules of trade between nations; and the Asia-Pacific Economic Cooperation (APEC), an intergovernmental grouping operating on the basis of nonbinding commitments and open dialogue to facilitate economic growth, cooperation, trade, and investment in the Asia-Pacific region. It is also signatory to the Agreement on the Common Effective Preferential Tariff Scheme for the Association of Southeast Asian Nations (ASEAN) Free Trade Area or AFTA, which seeks to eliminate tariff barriers among the Southeast Asian countries with a view to integrating the ASEAN economies into a single production base and create a regional market.

Alongside these formations are agreements with strategic trading partners, discussed either regionally or bilaterally. In 2005, a Memorandum of Understanding on the Early Harvest Programme was signed between the governments of the Philippines and China, in accordance with the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and the People's Republic of China. Likewise, the governments of South Korea and ASEAN (except Thailand) signed a free trade agreement (FTA) in May 2006, which took effect in July 2006. The Japan-Philippines Economic Partnership Agreement (JPEPA), a free trade agreement that covers services, investment, human resources development, and other forms of cooperation, was signed on 9 September 2006. As the Doha round of trade negotiations in the WTO is currently under indefinite suspension, more bilateral trade and investments agreements are in the offing. Even countries like Australia and India have jumped in the bandwagon as they look into potential economic partnership agreements with the Philippines. Similarly, there is a high probability that developed countries will be pushing aggressively for regional FTAs. In response to a widening net of bilateral deals being negotiated by the China-Japan-Korea triumvirate and as an attempt to open up and maintain economic footing in the region, both the European Union and the United States are pursuing expanded trade cooperation through FTAs with ASEAN as a regional bloc or with its individual member-states.

With the proliferation of FTAs and continuing implementation of multilateral, regional, and bilateral accords, all of which have an impact either positively or

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negatively on the livelihoods of various sectors, it is appropriate to ask whether mechanisms for transparency and accountability are in place and to what extent civil-society groups are involved in the trade policymaking process. It should be recalled that during the ratification of the Uruguay Round of the GATT in 1994, civil-society groups criticized the government's secrecy in its conduct of negotiations. Government consultations with affected sectors took place only when the agreement was already due for ratification, clearly indicating that such exercises were merely perfunctory. In the lead-up to the ministerial conferences of the WTO, social movements again clamored for information disclosure and inclusion in formulating and firming up the negotiating strategy of the Philippine government, but to no avail. On the other hand, talks on FTAs have been more surreptitious, with the executive department exercising monopoly of the process. Meanwhile, other branches of government, along with civil society are kept in the dark.

In reality there are existing means of participation in the process. While the Department of Trade and Industry (DTI) continues to be responsible for the implementation and coordination of trade and investment policies, trade policymaking is done by consensus under the Cabinet-level Committee on Tariff and Related Matters Committee (TRM). The committee consists of an intricate system of interagency subcommittees and technical working groups, co-chaired by the DTI and the National Economic and Development Agency (NEDA). Each government organization is mandated to consult with the private sector and nongovernment organizations (NGOs) in the various levels of the policy process. Some have gone so far as creating ad hoc bodies for this purpose. For instance, at the Department of Agriculture (DA), a multisectoral task force—composed of twenty-eight representatives from farmer groups, industry associations, business federations, NGOs and people's organizations, and other relevant government institutions and agencies—was set up in 1998. Called Task Force on WTO Agreement on Agriculture (Re)negotiations (TF WAAR), its main responsibility is to consider, develop, evaluate, and recommend Philippine negotiating positions and strategies for the new round of negotiations.

But to what extent can civil society influence the substance of these policies, especially when at the top of the tier, crucial information is withheld by the chief negotiators? International trade is under the realm of Philippine foreign policy. As such, negotiations are pursued behind closed doors by an elite group of experts in entirely secret diplomatic processes. Information is treated as potentially debilitating to negotiating tactics and thus shielded from public scrutiny. In addition, trade by design is a policy domain where only a handful of actors have control in decision making, mostly economic and legal experts. Protective instruments were instituted to shield these organizations from external influence and particularistic interests, and from the conflicts, setbacks, and media assault produced by open consultation. Thus, international trade policymaking has been basically technocratic.

IS A PHILIPPINE TRADE REPRESENTATIVE OFFICE THE SOLUTION?

Through the incessant Congressional lobby work of a range of NGOs and even business groups, House Bill (HB) 4798[2] and Senate Bill (SB) 2236,[3] entitled "An Act Creating the Philippine Trade Representative Office, Appropriating Funds Therefor, and For Other Purposes" were filed on 4 October 2005 and 27 March 2006, respectively.[4] The bills are hinged on three pillars of trade and investment policy making: policy coherence and predictability, transparency, and accountability. It is also guided by the principles of democratic governance. The proposed office shall be the principal agency in-charge of strategizing the Philippine trade position based on a national development agenda, and the chief representative of the Philippines for international trade negotiations, whether bilateral, regional, or multilateral. In such a setup, all final negotiating positions would come from this single agency.

This proposition is akin to the Office of the United States Trade Representative (USTR). It actually mirrors the structure of the USTR. Through an interagency structure, it coordinates trade policy, resolves disagreements, and frames issues for presidential decision. It also consists of a private-sector advisory committee to ensure that trade policy and negotiation objectives adequately reflect national economic interests.

While indeed the Philippine Trade Representative Office (PTRO) can remedy the problems emanating from the absence of a clear-cut hierarchy, mandate, and delineation of authority in the trade policy-making structure resulting in what the authors of HB 4798 term as a "tug-of-war" among the different agencies, it may not be able to substantively address the issues of lack of transparency and exclusion of affected sectors and civil-society groups in the trade policymaking process. Some of the reasons are as follows:

1. Under Section 3 of HB 4798 and SB 2236, the PTRO shall be lodged at the Office of the President, and headed by a Philippine trade representative with the rank of ambassador extraordinary and plenipotentiary and three deputy Philippine trade representatives, all of whom shall be appointed by the president. This further consolidates the power of the executive, specifically the president, in trade-related matters. If the president espouses a neoliberal agenda, in which key defining characteristics include a technical approach to trade and the exclusion of dissident forces from the arena of policy making, then the PTRO does not provide a responsive arena for civil society advocating reforms in trade policies that are deemed threatening to the full realization of the President's economic orthodoxy.

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[2] This was introduced by Representatives Lorenzo R. Tañada III (fourth district, Quezon), Ronaldo B. Zamora (lone district, San Juan), Del R. de Guzman (lone district, Marikina City), Proceso J. Alcala (second district, Quezon), Rafel P. Nantes (first district, Quezon), Danilo E. Suarez (third district, Quezon), Emmanuel Joel B. Villanueva (CIBAC Party List), and Mario "Mayong" J. Aguja (Akbayan Party List) during the second regular session of the Thirteenth Congress.

[3] This was introduced by Senator Manuel A. Roxas III during the second regular session of the Thirteenth Congress.

[4] It is not the first time, however, that such legislative measure is introduced. In 2002, a piece of legislation to create a WTO Affairs Strategy Office (WTO ASO) was filed by Representative Agusto "Boboy" Syjuco. The WTO ASO, to be lodged at the Office of the President, is to some extent similar to the defunct WTO/AFTA Commission. It has no authority over the trade negotiations.

2. The organizational structure of the PTRO is unclear. But it is obvious that like the present setup with the TRM, it will be dominated by agencies and bureaus from the executive department, which include, among others, NEDA, DTI, DA, and the Department of Finance. What will be the PTRO's relationship with the House of Representatives and the Senate? HB 4798 and SB 2236 have limited the role of members of Congress to the Advisory Committee for Trade Policy and Negotiations. But it is also ambiguous where this committee falls in the hierarchy of the PTRO. If the PTRO is patterned after the USTR, then it should be emphasized that since its creation, the USTR has maintained close consultation with Congress.

   Five members from each House are formally appointed under statute as official Congressional advisors on trade policy, and additional members may be appointed as advisors on particular issues or negotiations. Liaison activities between the agency and Congress are extensive. USTR provides detailed briefings on a regular basis for the Congressional Oversight Group, a new organization composed of members from a broad range of congressional committees. In addition, USTR officials and staff participate in hundreds of congressional conversations each year on subjects ranging from tariffs to textiles. (http://www.ustr.gov/Who_We_Are Mission_of_the_USTR.html)

   The standing of Congress in this proposed body is very important if transparency and civil-society participation are at stake. To some extent, civil society has leverage in Congress. Through the inquiries, the Congress has become a platform for grievances and a weapon to compel the executive to disclose crucial information pertaining to trade negotiations.

3. The instruments for transparency and civil-society participation in the bills are obscurely phrased. Section 11 of the bills stipulates that the Philippine trade representative *shall* seek information and advice from representatives of the private sector and NGOs working on trade policy on different matters pertaining to international trade. This gives the PTR an option rather than a clear directive to engage these outside actors. Consultation must be enforced.

   Likewise, Section 13, which identifies the members of the advisory Committee for Trade Policy and Negotiations, has loopholes that could be exploited by individuals and groups seeking to circumvent the participation of civil society in the PTRO. According to this clause, "The Committee shall consist of not more than forty members from relevant national government agencies, both Houses of Congress and representatives of industry, agriculture, labor, small business, service industries, retailers, and consumer interest. The committee shall be broadly representative of the key sectors and groups of the economy, particularly with respect to those sectors and groups which are affected by trade." Without explicitly stating which type of groups would compose the committee, agriculture may likely be represented by sugar millers or exporters,

given their history of gaining concessions from the government.

The move to centralize trade policymaking through HB 4798 and SB 2236 may not be a wise policy advocacy if the objective is to make the process transparent or participatory. The Discussion Paper of the Philippine Institute for Development Studies—"Does the Philippines Need a Trade Representative Office?"—should serve as a caveat.

> The unfortunate result of the current political climate in the Philippines is that the shield that is supposed to protect policy from inordinate public influence does not hold. This is precisely the issue that the United States sought to address with the creation of the USTR. The presumption is that government sectoral agencies have the tendency toward "sectoral policy capture," such that an independent, non-aligned agency capable of doing a more objective processing economic trade-offs is needed. (Pasadilla and Liao 2005:17)

The Philippine Trade Representative Office will, therefore, further insulate the trade policymaking process and make it a more technocratic matter.

RECOMMENDATIONS

There are attendant consequences to centralization. With the way HB 4798 and SB 2236 are currently formulated, the Philippine trade representative wields too much power. This is perhaps because it was conceived more as a response to policy incoherence in trade policymaking than a solution to nontransparency. In the current schema, civil society can take advantage of multiple power centers. Although the different agencies of government have varying degrees of openness to participation of nongovernment actors, civil society may be able to forge alliances with sympathetic departments. For instance, the DA is supportive of small farmers' advocacies to protect the agricultural sector. This can be used to pressure the DTI or NEDA.

HB 4798 and SB 2236 can, however, be improved through the following:

1. Achieve balance of power by giving Congress a more keen role in the PTRO

   In the organizational structure of the PTRO, a joint executive-legislative council can be put in place instead of just an inter-agency coordinating committee. This shall include members of the House of Representatives and the Senate from the majority and minority, as well as party-list groups. This way, the Congress will also play a key function in the formulation of trade-negotiating positions. Likewise, the PTRO is also accountable to the legislature.

2. Clarify the role of the advisory committee and guarantee representation

   The position of the committee in the hierarchy must be stated clearly. Will it be independent of the Philippine trade representative? Rather than the Philippine

trade representative appointing the members of the committee, it is best if the selection process is left to the different departments and Congress. As stated by Section 13, the chairman will be elected by the committee from among the members. Also, impartiality of the committee should be maintained, thus its executive director should not be appointed by the Philippine trade representative.

It is important that the bills require that a proportion of the membership of the committee come from the marginalized and underrepresented sectors, various NGOs with known track record on trade policy advocacy, and the academe.

3. Institute mechanisms for regular open consultation and disclosure of information

   While the Philippine trade representative draws advice from the advisory committee, it must hold regular public hearings on matters that have severe repercussions on majority of the population. In addition, procedures on disseminating crucial information, without compromising the official negotiating strategy, should be set up.

Finally, caution should be applied in portraying the institutionalization of civil-society participation through ironclad canons as a way of democratizing the trade policy-making process. Equally important are the openness of the politico-administrative environment and political culture.

REFERENCE

Pasadilla, Gloria O. and Christine Marie M. Liao. 2005. *Does the Philippines Need a Trade Representative Office?* Discussion Paper Series No. 2005-26. December.

Optimizing the United Nations Convention against Corruption

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In December 2003, the United Nations Convention against Corruption (UNCAC) was signed by several States in Mexico. The instrument was a result of the UN General Assembly resolution 55/61 of December 2000, which recognized the need for an effective international legal instrument against corruption apart from the existing United Nations Convention against Transnational Organized Crime. UNCAC provides a platform on which cooperation among countries in the fight against corruption can prosper.

UNCAC's highlights can be categorized into four areas: prevention, criminalization, international cooperation, and asset recovery. An entire chapter of the Convention is allotted to prevention, specifying measures directed at the private and public sectors. The measures include "model preventive policies, such as the establishment of anti-corruption bodies and enhanced transparency in the financing of election campaigns and political parties." As the prevention of corruption should involve all sectors of society, the Convention urges all "countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it."[2]

Moreover, the Convention requires all states to criminalize wide-ranging forms of corruption if these are not yet recognized as such by their domestic laws. The Convention criminalizes "not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence, and the concealment and laundering of the proceeds of corruption." Also listed as offense are acts committed in support of corruption such as money laundering and obstructing justice. The Convention likewise deals with private-sector corruption.

The Convention also provides that countries assist each other in all aspects of the fight against corruption such as prevention, investigation, and the prosecution of offenders. The Convention requires that countries "render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders . . . as well as undertake measures which will support the tracing, freezing, seizure, and confiscation of the proceeds of corruption."

A major breakthrough of the Convention is its provision on asset recovery. This chapter also involves intensive negotiations, "as the needs of countries seeking the illicit assets had to be reconciled with the legal and procedural safeguards of the countries whose assistance is sought." The provisions on asset recovery spell out the "return of confiscated property to the requesting state, to the return of such property to the prior legitimate owners, or to compensation of the victims." The provisions "support the efforts of countries to redress the worst effects of

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[2] http://www.unodc.org/unodc/crime_convention_corruption.html, accessed on 21 August 2006.

corruption while sending at the same time, a message to corrupt officials that there will be no place to hide their illicit assets."[3]

BENEFITS OF THE CONVENTION

The Convention provides significant technical know-how on how to better fight corruption. It presents a major breakthrough in the fight against corruption, especially in this global age where proceeds of the crime can be put away in another country with facility. The Convention provides that states put in place legal mechanisms that would aid another country in the prosecution of corruption offenses as well as the recovery of ill-gotten assets. One pertinent provision is Article 46, which urges states to provide one another mutual legal assistance in investigations, prosecutions, and judicial proceedings with regard to offenses related to corruption. Another is the entire chapter 5 on Asset recovery, covering Articles 51 to 59, tackling provisions such as the prevention and detection of transfers of proceeds of crime, measures for direct recovery of property, mechanisms for recovery of property through international cooperation in confiscation, and return and disposal of assets. The Convention is especially helpful for the Philippines given our efforts to recover the ill-gotten wealth stashed abroad of former president Ferdinand Marcos and his cronies.

Besides the assistance afforded at the international level, the Convention also presents statutes that would strengthen the anti-corruption efforts of public and private sectors in the country. Although there are already a number of local policies and laws concurring with the provisions of the Convention, our legal statutes can still benefit from some of its principles, such as Article 12 on private-sector corruption, which has not been dealt with extensively by our laws. Others are Article 16 presenting the criminalization of bribery of foreign public officials and officials of public international organizations, and Article 20 urging the criminalization of illicit enrichment that occurs when there is a "significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income." The latter will certainly enhance the Lifestyle Check initiative of the Office of the Ombudsman.[4] Article 21 providing the criminalization of bribery in the private sector, and the "concealment or continued retention of property when the person involved knows that such property is the result" of corruption as stipulated in Article 24 will also be very helpful to us. In addition, Article 7 urging transparency in the funding of candidacies of public officials and political parties will certainly help enhance our laws in this regard.

The Convention also urges that states take appropriate measures to promote the active participation of civil society, nongovernment organizations, and community-based organizations in the prevention of and fight against corruption and to "raise public awareness regarding the existence, causes and gravity of, and the threat posed by corruption" (Article 13). Besides providing technical know-

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[3] http://www.unodc.org/unodc/crime_convention_corruption.html, accessed on 21 August 2006.

[4] The "Lifestyle Check System" is a character test for public officials of whether they are consistently upright in the way they perform their duties and earn a living. When lavish lifestyles seem irreconcilable with the modest ways in which public office is served and conducted, then this warrants scrutiny. The system therefore checks whether the ways by which government officials live are consistent with their incomes. The officials' statements of assets and liabilities, income tax returns, and visible determinants of extravagance (e.g., luxurious properties) are checked against their official salaries.

how, the Convention also envisions the cultivation of a corruption-intolerant culture, with its imprimatur to involve the nongovernment sector and the larger society in the battle against the scourge.

URGENT RATIFICATION OF THE CONVENTION

In view of the benefits the Convention offers, it is imperative for the Senate to hasten its ratification so that policies and laws that would give force to UNCAC will be put in place. Although President Gloria Macapagal Arroyo signed the Convention for transmittal to the Senate of the Philippines for ratification on 25 February 2005, it is unfortunate that the Senate has yet to ratify it. Other countries have gone ahead of us in approving the Convention.[5]

Approval of the UNCAC will send the signal to the international community that fighting corruption is a government priority. The presidency should therefore urge the Senate to move for immediate ratification. Moreover, not only will the Convention enhance the government's campaign but also that of the private sector. Besides the fact that the Convention's implementation can be part of the platform of reform-minded politicians, this can also serve as benchmark for civil-society organizations by which to engage government.

Civil-society groups, notably the Transparency and Accountability Network (TAN), have embarked on activities to ensure the Convention's ratification. Members of TAN have been meeting with senators to convince the latter to move for immediate approval. TAN has conducted information-dissemination sessions with members of civil-society groups and the media about the Convention.[6] These sessions are also conducted to help TAN in its lobby work in the Senate. With more clamor coming from the media and civil society, the Senate might be prodded to step up ratification.

WHAT TO DO AFTER RATIFICATION

After ratification, the next important move is the implementation of the provisions of the Convention and the enactment or amendment of domestic laws that "would give expression to the letter as well as to the spirit of the Convention." The realization of UNCAC in the country requires the efforts of actors from government as well as the private sector. The following recommended actions are steps toward this direction.

Conduct information-dissemination campaign about the Convention

Information-dissemination campaign about the Convention targeting government officials, civil-society groups, and the general public should be conducted. Feeding information about the Convention to civil-society groups and government officials would educate them about what specific advocacies to take in relation to corruption. Regarding government officials, legislators are particularly important targets of the campaign not only for them to learn the details of the Convention

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[5] Out of 140 signatories including the Philippines, 67 have ratified the Convention so far. United Nations Office on Crime and Drugs website. http://www.unodc.org/unodc/crime_convention_corruption.html, accessed on 21 August 2006.http://www.unodc.org/unodc/crime_signatures_corruption.html.

[6] Telephone interview with Toix Cerna (project coordinator, Transparency and Accountability Network), 15 August 2006.

but also to understand the implications of the latter on the national legal system. Their education will also pave the way for their development of domestic laws that will give force to the Convention.

Implementation of legislative measures to realize provisions of the Convention

The transformation into national laws of the Convention's provisions is the first step toward implementation. In line with this, it would be instructive to conduct a systematic inventory of existing laws to identify legislative measures that need to be instituted or revised. This can be an activity of civil-society groups to map out their lobby efforts in Congress. Reform-minded legislators can also engage in such activity to lay down their agenda in Congress.

Several provisions of the Convention already have corresponding laws in the country, especially those pertaining to the conduct of public officials and members of judiciary, and public procurement and management of public finances. Likewise, the provisions on the need to put up preventive anti-corruption bodies and to some extent transparency in public administration are already spelled out in the country's legal statutes.

However, our legal statutes can still benefit from the principles of the Convention. For example, we can get ideas from the provisions on private-sector corruption and mutual legal assistance among states to enhance our laws in these areas. The Convention also provides opportunity for the examination of pending bills in Congress that are in congruence with its provisions. One such pending bill is on the Right to Information, which aims to further transparency in government transactions (in relation to Article 10, among others) and the protection of persons reporting on corruption (in relation to Article 33).[7]

Networking at the international level

Local civil-society groups should network with NGOs abroad to pressure foreign governments to ratify the Convention and the implementation of domestic laws that will give force to its provisions. Several provisions of the Convention cannot be realized without the cooperation of another country, especially in the case of asset recovery. Also, the transfer of evidence for use in court of another country as well as the extradition of offenders cannot be enforced without the cooperation of governments abroad.

The Philippine government (after the Senate's ratification) can also work with member states in regional organizations of which it is part to map out plans to convince other states to ratify and implement domestic laws related to the Convention. Joining efforts with other countries will strengthen the Philippine position in the negotiations.

Anti-corruption legislators can also tap their membership in international organizations to campaign for other State Parties to ratify the Convention. A number of Philippine legislators are members of the Southeast Asian

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[7] The proposed bill, which was put together primarily through the efforts of a coalition of NGOs called the Access to Information Network (ATIN), "seeks to put in place a uniform, simple, and speedy procedure in enforcing the right to information and provide clear penalties for the unlawful denial of access to official information and unlawful destruction of records. At present, erring public officials face only administrative sanctions." The proposed bill also seeks the "creation of an independent body whose job is to hear appeals from citizens who have been denied access to information and introduce mechanisms to compel government bodies to actively inform the public on matters of public concern."It also provides protection to whistleblowers (Chua 2003).

Parliamentarians against Corruption (SEAPAC), which is a member of the Global Organization against Corruption (GOPAC). The latter is an "international network of parliamentarians dedicated to good governance and combating corruption throughout the world."[8]

Monitor implementation of the Convention and strategizing against corruption

Monitoring the implementation of the Convention is a task that should be undertaken by both government and civil-society organizations. The government could consider the possibility of putting up a body mainly concerned with monitoring the implementation of UNCAC. The body can also perform the important task of coordinating the efforts of various anti-corruption agencies so as to achieve better compliance.[9] Some of the agencies presently involved in anti-corruption are the Department of Justice and the Office of the Ombudsman (investigation and prosecution); the Securities and Exchange Commission and the Department of Trade and Industry (regulation of corporations); the Central Bank of the Philippines (regulation of banks); the Department of Foreign Affairs (extradition and mutual assistance); the Presidential Anti-Graft Commission (recovery of ill-gotten wealth of former president Marcos, his family, and associates); and the Commission on Elections (regulation of elections).

Civil society can also play a crucial role in monitoring the implementation of the Convention as well as in the prevention of corruption. Although civil-society groups in the country have put into action several campaigns to curb corruption, they have yet to systematically implement their programs in some areas, such as in monitoring and verifying government expenditure. Also, they have yet to put in place effective mechanisms to monitor the financial assets of political candidates and government officials, as well as election finances of candidates and political parties.

Civil-society groups as well as government anti-corruption bodies should partner with the media in anti-corruption campaigns. The media's role in the fight against corruption is particularly significant in identifying and exposing mismanagement and corruption in the public sector. The media's surveillance can also help in the promotion of a corruption-intolerant culture (United Nations 2004).

In addition, the vigilance and cooperation of the private sector are important especially in light of the Convention's provision on corruption in this sector. After domestic laws aimed at curbing private-sector corruption are instituted, there should be cooperation between law-enforcement agencies and private-sector entities for the statutes' implementation. Professional associations (especially in the case of lawyers and accountants) can play "a crucial oversight role in promoting and monitoring their members' compliance" (United Nations 2004).

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[8] Global Organization against Corruption website. http://www.gopacnetwork.org/main_en.htm, accessed on 2 October 2006.

[9] As pointed out by Dr. Prospero de Vera in his review of this paper, the ratification of UN conventions paved the way for the organization of offices mainly concerned with monitoring their implementation. For example, the ratification of the UN Convention on the Rights of the Child paved the way for the creation of the Council for the Welfare of Children to monitor Philippine compliance.

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Regulating Short-Term Capital Flows

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INTRODUCTION

The series of capital account crises in 1990s (i.e., ASEAN, Brazil, Mexico) highlighted the need for emerging economies to reduce their dependence on foreign capital. Among economic managers there has been a heightened interest in mechanisms and institutions to effectively manage short-term capital flows, which can threaten and undermine countries' socioeconomic well-being. Capital controls, if effectively used by the state, can be beneficial to the economy in several ways (Singh 2000:136-139). They can protect and insulate the domestic economy from volatile capital flows and other negative externalities. Capital account regulation is critical for the enhancement of domestic savings and investment. Imposition of capital controls increases the bargaining power of countries to negotiate with the private sector and multilateral institutions wherein a country asserts its ability to shape economic policy. By influencing the exchange rate, governments can maneuver the terms of trade in order to protect domestic products from external competition (i.e., devaluing exchange rate to boost exports). Capital controls can also help in saving foreign exchange for debt servicing, imports, and capital goods. Governments can also generate much-needed revenues through tax-based investment controls, customs duties, and controlled exchange rates, among others. The type of capital controls to be implemented, however, depends on the nature of financial flows and the institution through which the capital is flowing. For instance, capital controls on the banking sector will be different from those on the nonbanking sector (e.g., capital markets) because of their peculiar characteristics and distinct regulatory agencies (Singh 200:125).

The Philippine government's liberalization of capital accounts requires reexamination, given the unpredictable character of the global financial market. A serious policy error the Bangko Sentral ng Pilipinas (Central Bank of the Philippines [BSP]) committed before and during the early years of the 1997 Asian financial crisis was the protection of the peso to project a strong economy. Parallel to the uncontrolled surge of portfolio investments, BSP purchased large amount of dollars that overvalued the country's currency. It exacerbated the worsening trade deficit during the period. Thereafter, there was widespread realization that depreciating the peso was imperative to reveal the real exchange rate. This can be pursued by discouraging short-term capital flows.

Prudent regulations and strong financial institutions are considered the best protection against currency and banking crises. But since these measures may take time to realize, short-term capital controls must be properly established (WBGDF 2000). These controls can accomplish two goals: 1) reduce, but not eliminate, the

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volatility of flows, and 2) reduce, but not eliminate, the discrepancy between private and social returns (Reyes-Cantos 1999). They are appropriate "where financial markets are thin, the private sector's risk-management practices are underdeveloped, and the regulators' capacity to supervise the financial sector is limited—in other words, where the conventional defences against systemic risk are not enough" (Eichengreen 1998).

The following section is a cursory look at current policies of the government relating to capital controls. The succeeding part discusses the different strategies that the government can adopt in managing capital inflows and outflows. These models throw "sand in the wheels" of global finance, which can protect the country from financial market reversals.

CURRENT POLICIES ON CAPITAL CONTROLS

The government maintains a liberalized policy on external current and capital account transactions. The Arroyo government's Medium-Term Philippine Development Plans (MTPDP) for the period 1999-2004 and 2004-2010 recognize that reliance on volatile capital flows—short-term debt and investment—can destabilize the foreign exchange market and the financial system. They, however, have failed to institute policies on capital controls pertaining to the external sector. The documents reveal that the country would continue to liberalize and deregulate many of its industries in the future. Government financial reforms focus more on strengthening the regulatory framework and promotion of a market-determined exchange rate. Nine years after the crisis, no significant capital control mechanisms have been instituted (e.g., mandatory deposits, taxes on significant foreign exchange transactions) to protect the country from massive capital flight.

In January 2004, BSP eased the rules on dollar investments by allowing foreign investors to recover their dollar investments in the stock market with certain conditions (Ferriols 2004). Learning from the Asian crisis, BSP allows investors to convert the peso proceeds of their stock investments into dollars provided the original stocks were bought with dollars. The dismantling of restrictions on the outflow of dollars from the stock market is envisioned to manage speculative capitals that can destabilize the peso-dollar exchange rates. The following are the existing government policies relating to foreign-exchange transactions and foreign investments (BSP 2005, 2006).

1. PERSONS WHO CAN PURCHASE FOREIGN EXCHANGE FROM BANKS IN THE PHILIPPINES

o Any person or firm can purchase foreign exchange (FX) with pesos from banks in the Philippines for outward remittances to pay for FX obligations to payees abroad provided supporting documents required under Bangko Sentral ng Pilpinas' (BSP) rules are presented to the FX selling bank. Such obligations may include payment of importations and non-trade FX obligations such as medical expenses incurred abroad, or servicing foreign loans or investments. BSP registration is required for foreign loans or

investments before these can be paid/serviced using FX purchased from banks.

o The minimum documentary requirements for the sale of FX by banks, non-bank BSP-supervised entities, and their affiliate/subsidiary forex corporations are contained in Circular Letter dated 24 January 2002 (for payment of import obligations) and Circular 388 dated 26 May 2003 (for non-trade transactions).

2. RULES ON EXPORTS AND IMPORTS

o Imports of gold in any form is allowed without restriction except for coin blanks, essentially of gold, which require prior BSP approval, and for any article manufactured in whole or in part of gold, the stamps, brand, or marks of which do not indicate the actual fineness of gold quality, which is prohibited. Exports of gold in any form is likewise allowed except for gold from small-scale mining or panned gold, which is required to be sold to the BSP pursuant to Republic Act 7076 dated 27 June 1991.

o Registration of imports under Documents against Acceptance (D/A) and Open Account (O/A) to be paid with foreign exchange purchased from a Philippine commercial bank is no longer required. Instead, such imports need only to be reported to BSP through banks prior to payment, in accordance with BSP existing rules.

o A person may, without prior BSP approval, import or export, or bring in or out of the country, or electronically transfer legal tender, Philippine notes and coins, checks, money orders, or other bills of exchange drawn in pesos against banks operating in the Philippines in amounts not exceeding PHP 10,000. Prior authorization from the BSP is required for larger amounts.

o Regarding the amount of foreign currency that a person may bring in or out of the Philippines, there is no such restriction or limit on the amount but a person bringing foreign currency in or out of the country in excess of USD10,000 or its equivalent must declare this in writing by accomplishing a BSP Foreign Currency Declaration Form available at the Bureau of Customs desk in the arrival/departure areas of all international airports/ seaports. Traveler's checks in any amount are exempted from such declaration requirement.

3. RULES ON FOREIGN INVESTMENTS

o The registration of foreign/nonresident investments with the BSP is not mandatory. It is required only if the FX to pay for future repatriation of the capital and outward remittance of dividends/profits thereon will be

purchased from banks in the Philippines. BSP had delegated to commercial banks the registration of foreign investments in shares of stock listed in the Philippine Stock Exchange (PSE) purchased through the PSE trading floor.

o Registration will authorize the investor to purchase FX from the Philippine banking system to service repatriation of capital and/or remittance of dividends/profits/earnings from registered investments. The BSP registration document is part of the prescribed documents to support an application to buy FX from banks.

o Basic requirements for registration

§ First, as a general rule, there must be an inward remittance of FX, which should be converted to pesos through a bank in the Philippines as evidenced by a duly accomplished BSP-prescribed Certificate of Inward Remittance (for cash investments) or, proof of transfer of assets to the investee/beneficiary firm in the Philippines (for investments in kind).

§ Second, there must be evidence of receipt of the funds/assets by the local investee/beneficiary/seller such as Sworn Certification of such receipt and issuance of shares in consideration thereof (for investment in stock corporations); stockbroker's purchase invoice or subscription agreement (for PSE-listed shares acquired through the PSE trading floor); accredited dealer's Confirmation of Sale (for government securities); Certificate of Time Deposit (peso time deposits with tenor of ninety days or longer); and contract (for money market instruments).

o Foreign investments in peso time deposits with banks can be registered with the BSP provided that the deposits were funded by an inward remittance of foreign exchange, which was converted into pesos through the Philippine banking system. In addition, the time deposit has to have a maturity of ninety days or longer.

POLICY OPTIONS AND RECOMMENDATIONS

Control on inflows

Controls on inflows must be implemented to maintain the country's autonomy in monetary policy. This can be accomplished by imposing ceilings on investments and loans, implementing capital gains tax, setting minimum period of stay, or applying reserve requirements for incoming investments. In practice, controls on inflows are easier to implement than controls on outflows. Nonetheless, they have been proven effective only if applied in the short run as preemptive and corrective measures. Otherwise, they can become distortionary, subject to the arbitrary behavior of market players.

Chilean Unremunerated Reserve Requirement (URR)

The Chilean capital controls strategy is instructive. In June 1991, the country introduced what became known as an unremunerated reserve requirement (URR), or *encaje*, on new capital inflows. These restrictions aimed to reduce inflation brought by the surge of capital in 1980s and maintain export competitiveness. A rate of 20 percent was applied to all portfolio capital to be held in a non-interest bearing account with the central bank for up to one year. A year later, the rate was raised to 30 percent for foreign-currency borrowing except by corporations. By August 1992, the rate was applied to all transactions. The rate was lowered to 10 percent in June 1998 before being zeroed out in September 1998 (Ariyoshi et al. 2000). The government also imposed a stamp tax of 1.2 percent for short-term foreign lending with a maturity of one year or less. The country experienced an impressive 8.5 percent average annual growth during the period when encaje was in place.

The Fabella Proposal

UP School of Economics professor Dr. Raul Fabella proposed a "time-graduated capital gains tax" to target foreign and local speculators in stock and real estate market (1998). It aims to minimize, if not totally prevent asset bubble formation. The proposal can be summarized as follows:

1. A capital gains tax of 100 percent of all capital gains in excess of the 91-day T-bill rate if the stock or real property is sold in less than a year after purchase
2. Seventy percent of capital gains in excess of the 91-day T-Bill rate compounded two years if the sale is done between the first and second year of purchase
3. Fifty percent of capital gains in excess of compounded 91-day T-Bill rate $r(1 + r)(1 + r)$ if the sale is done after the second and third year of purchase
4. A flat 15 percent capital gains tax thereafter

Stiglitz Proposal

World Bank chief economist and Nobel Prize laureate, Joseph Stiglitz, suggested a limit on the extent of tax deductibility for interest in debt-denominated or foreign-linked currencies. This is to discourage too much dependence on foreign borrowings and resolve the country's problem on short-term indebtedness. It must be noted that chapter 7, section 34B, of the National Internal Revenue Code of the Philippines provides for the deduction of interest expense from one's gross income. As explained by Reyes-Cantos (1999:22), "the amount deductible shall be reduced by an amount equal to a declining percentage of interest income subjected to final tax. The rate is 41 percent starting 1998, 39 percent for 1999, and 38 percent for 2000. A further downward adjustment of the rate can therefore be put into effect for the interest expense on foreign currency-denominated loans" (Reyes-Cantos 1999:22).

International Tobin Tax

The Tobin tax (inspired by a proposal by former Yale University professor and Nobel Laureate James Tobin) is essentially a permanent, uniform, ad valorem transactions tax on international foreign exchange (forex) transactions. The

percentage of tax being imposed is inversely proportional to the length of the transaction (i.e., the shorter the holding period, the heavier the burden of tax). For instance, a tax of 0.25 percent implies that a twice-daily round trip carries an annualized rate of 365 percent; while a round trip made twice a year carries a rate of 1 percent. Hence, for a tax rate of 0.1 percent or USD 1,000 per million dollars sold, it could cost a daily or weekly speculators tax of 10-50 percent on their investment. Global civil-society organizations have used the tax to achieve two fundamental goals: 1) curb speculative short-term capital flows in the foreign-exchange market which produce volatile exchange rates, and 2) increase the national macroeconomic and monetary policy autonomy of global economies. It is important that the tax be implemented at the regional level (i.e., ASEAN or EU) to prevent capital from going to tax-free territories. Tobin tax was first promoted by the United Nations Development Programme (UNDP) during the preparations for the 1995 World Summit on Social Development, held in Copenhagen, Denmark. But the unfavorable response of Washington to the proposition stalled any UN plan to seriously scrutinize the proposal. Several studies have proven the feasibility of the tax (Kaul and Langmore 1996; Patomaaki 1999; OXFAM GB 2001; Griesgaber 2003).

CONTROL ON OUTFLOWS (MALAYSIAN STRATEGY)

Controls on outflows should be implemented whenever the country has to contend with dwindling foreign-exchange reserves and speculative attacks on currency. This should only be utilized during the height of a financial crisis. The classic example of this strategy was made by the Malaysian government. Malaysia's controls on capital outflows were implemented to safeguard the gains of the country prior to the 1997 financial crisis. The surge of capital between 1990 and 1993 forced Malaysian authorities to put temporary restrictions on speculative inflows in 1994 which, unexpectedly, led to the rise in dollar interest rates and decline in capital inflows. To safeguard the economy from further financial instability, capital-outflow controls were installed by tightening monetary policies, slashing government expenditures, and postponing the implementation of megaprojects. Several measures allowed a progressive reduction in interest rates without affecting the exchange rate or inducing capital flight. The strategy includes fixing of the ringgit to RM 3.8 to a dollar, repatriation of ringgit held abroad, ending of offshore trading in ringgit instruments, retention of the proceeds of sales of Malaysian securities in the country for a year, payment in foreign currency for imports and exports, among others (Lamberte 1998). Capital controls in Malaysia introduced two benefits. First, it ensured greater policy autonomy in lowering interest rates. Second, capital controls provided the economy elbow room to pursue economic adjustments and accelerate structural reforms necessary for sustained economic recovery (Masahiro and Takagi 2003:13).

SIMULTANEOUS CONTROLS ON INFLOW AND OUTFLOW (CHINESE STRATEGY)

China managed to shield its economy from the 1997 Asian financial crisis because of its strict capital controls (Singh 2000:144-145). These mechanisms provided

the country a foreign exchange reserve totaling USD 150 billion, a USD 40 billion trade surplus, and a USD 40 billion capital account surplus at the end of 1998. Interest rates in the country were significantly reduced during the crisis period. The Chinese government maintained a fixed exchange rate and independent monetary policy. Emphasis was on attracting long-term investments (i.e., foreign direct investments [FDIs]) and curbing portfolio and other short-term speculative inflows. Key elements of controls on inflows include the universal requirement for registration and strict criteria of approval. All inward FDIs must seek approval from relevant state agencies. Investors can only open foreign-exchange capital accounts in designated banks sanctioned by the government to engage in foreign-exchange activities. As for the outflows, there was tight control over the use of foreign exchange. All outward FDIs must be registered. All their incomes need to be repatriated back to China within six months of the end of fiscal year of the host country. Foreign exchange required for offshore business operations could be kept after obtaining approval of Chinese authorities. Chinese residents were also not allowed to borrow from foreign banks and other financial institutions. They were also not allowed to open personal foreign-exchange accounts abroad.

CONCLUSION

The above-cited measures are not necessarily mutually exclusive. The challenge is to come up with a policy design that incorporates their paramount strengths in different contexts. It must be emphasized that they should only "complement and not supplant" other reform measures like sound prudential regulation and consistent monetary and fiscal policies (Reyes-Cantos 1999:25). The government must "reduce it dependence on foreign capital, rapidly enlarge domestic savings, and use its domestic resources judiciously" (Sta. Ana 1998:110). Admittedly, the challenge lies in striking a balance between reducing the inflow of portfolio investments and encouraging the entry of foreign direct investments, which are more permanent and more beneficial to the economy.

Sequencing and timing are important in short-term capital regulation. It is recommended that the Philippine government follow in the footsteps of China in managing the entry and exit of foreign capital. At present, the Philippine government can pursue the above-cited capital controls on inflows. It is imperative that they be instituted before a financial crisis. Implementing the mechanisms otherwise may be detrimental to future investments. Controls on outflows, however, must be applied only in times of speculative attacks on the country's currency. Similarly, they must be "time-bound" since they should only act as corrective measures.

Overall, the implementability of the proposed measures hinges on the administrative capacity of the government. It must be noted that Malaysia's capital controls proved to be successful because of the presence of strong regulatory institutions. Similarly, the Chilean strategy could not have been effective without the earlier reforms implemented by the government, such as restructuring the banking system, enacting fiscal policies for budget surpluses, and reducing public debt.

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Penetrating Policy Spaces for Fair Trade in the PhilippinesStrengthening the Philippine Fair Trade Forum as a Quasi-Government Commission on Fair Trade

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Small and medium enterprises (SMEs) play a significant role in propelling not only local economies but the national economy as well. According to the Department of Trade and Industry (DTI), SMEs constitute 99 percent of the all business entities in the Philippines and contributes 32 percent to the economy. Almost 70 percent of the total labor force is employed in these firms (Department of Trade and Industry website; IBON 2005). With such enormous potential of SMEs to contribute to both rural and urban productivity, the government, through the Small and Medium Enterprise Development Council, came up with a blueprint that charts programs to propel SMEs to the forefront of economic development. Alongside government efforts to alleviate poverty particularly in the countryside, nongovernment organizations (NGOs) engaged in development work were independently experimenting with providing alternative sustainable livelihoods to marginalized producers and artisans. Among these NGOs are those identified as fair trade[2] organizations, which have silently inched their way into various villages. Fair trade advocates and practitioners have explicit partiality for low-income producers and artificers, providing them with otherwise elusive markets in more affluent countries for their produce and handicrafts. In the Philippines, three decades into the fair trade enterprise and having created a number of enclaves of self-reliant communities, the Philippine Fair Trade Forum (PFTF)[3] was established in 2002. The forum's mandate was to facilitate access to domestic and international markets of fair trade products,[4] function as a hub of information exchange among fair trade organizations in the Philippines, undertake campaigns to raise consumer awareness of fair trade practices and principles, and engage in policy advocacy. To date, fair trade advocates and practitioners continue to grapple with how to maximize policy spaces to push forward the fair trade agenda (Cabilo 2006). Preference has been placed on the forum's consumer-awareness campaign to enable member producer-organizations' goods to advance in the local market. This, however, does not deter PFTF members from pursuing its policy advocacy commission.

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[2] A practice that traces its origins from the North, specifically Europe, fair trade is based on a trading partnership based on transparency and respect,which engenders trust between Southern producers and artisans and Northern consumers (IFAT website). This relationship is facilitated by intermediary organizations both from developed and developing countries.

[3] The PFTF was founded by fourteen fair trade organizations with the support of the Advocate of Philippine Fair Trade Inc. and Oxfam-Great Britain Philippine office.

[4] Fair trade products are those cultivated (food products) and crafted (handicrafts) under non-exploitative circumstances (no children employed as workers, environmentally
sound practices, transparent relations in cases of contracted and subcontracted work). Among fair trade products produced in the Philippines are handicrafts, organic mangoes, organic
muscovado sugar, organic bananas, among many others.

A study examining the PFTF as a representation of the Philippine fair trade movement[5] indicates that some member organizations put equal emphasis on the necessity of engaging policy advocacy. This way, policies that impinge on the welfare not only of consumers, but more importantly small producers and crafts people, are addressed from the perspective of adherents of fair trade principles and practices (Cabilo 2006). This necessitates the PFTF to strike a balance in performing its mandate of engaging in both consumer awareness and policy advocacy. This brief explores possible ways with which the PFTF can navigate around the existing policy environment and corresponding institutional structures, as it carries out its mission to advance fair trade in the Philippines through policy advocacy.

EXISTING INSTITUTIONAL STRUCTURE RELEVANT TO FAIR TRADE

At present, the Fair Trade Division of the DTI's Bureau of Trade Regulation and Consumer Protection (BTRCP) serves as the lead agency mandated to take charge of matters relating to fair trade. It is tasked as the policymaking body that administers trade and consumer protection laws.[6] It is mandated to perform the following specific functions:[7]

a. Oversee the effective implementation of fair trade laws
b. Provide field officers with operating guidelines on the implementation of laws on trade malpractices
c. Train field staff on enforcement of fair trade laws
d. Formulate programs and policies on fair trade laws and other related provisions
e. Monitor congressional bills and resolutions that directly affect consumers
f. Conduct regional consultancy on enforcement
g. Prepare position papers on domestic and fair trade-related bills and resolutions

These functions of the BTRCP makes participation of the PFTF in the policy-making process more imperative to influence the direction that the government takes with regard to fair trade. It is pertinent for advocates and practitioners of fair trade to be able to present a more inclusive definition of fair trade, which is particularly significant in forging policies and legislations pertaining to fair trade.

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[5] The fair trade movement in the Philippines is composed of producer organizations, intermediate marketing organizations (IMOs), and support organizations. Producer organizations may be farmers or artisans. IMOs, on the other hand, facilitate the export of products and creations of producer organizations while support organizations are NGOs that provide technical and marketing support and product development services to producer organizations (Cabilo 2006; Redfern and Snedker 2002; APFTI n.d.).

[6] www.dti.gov.ph

[7] http://www.apeccp.org.tw/doc/Philippines/Organization/phorg4.html.

CREATING THE PHILIPPINE FAIR TRADE COMMISSION

Based on official government statements, fair trade is understood as pertaining to consumer protection[8] and "fair" competition[9] among firms. This, however, captures only half of the picture of how the fair trade movement defines "fair trade" as fair trade also includes producers, SMEs, and other stakeholders in the trading process. This variance in how fair trade is articulated is reflected through the various propositions to establish a Philippine Fair Trade Commission.

First among these proposals is that of fair trade practitioners and advocates that has been circulated informally in gatherings of the PFTF. In the course of forging the policy agenda of the PFTF, establishing a Fair Trade Commission was proposed by some PFTF member organizations.[10] The proposed fair trade body is envisioned, first, to document the existing policies and legislations that concern low-income producers, and artisans and consumers. Second, the commission is viewed as a coordinating body that synergizes efforts of NGOs and various national and government agencies to implement programs and projects that enhance organizational and business-development capacities of producers and craftsmen. This would enable producers and craftsmen to play a more significant role in bringing about a more equitable global trading regime. The proposed Fair Trade Commission will undertake information campaigns on fair trade practices and principles that puts more emphasis not only on profit bottom lines but also on environmental and social objectives.

The second proposal is enunciated by the Tariff Commission, which is to create a government body—the Philippine Competition Commission (PCC)—to facilitate the review, formulation, and enforcement of the proposed comprehensive Philippine competition and anti-trust policy.[11] This proposal was a result of a two-phase study conducted by the Tariff Commission in 1999 (first phase) and 2001 (second phase). The Office for Policy Analysis and Advice (OPAA) and the Competition and Consumers Welfare Administration (CCWA) will be created to undertake the two major functions of the PCC, respectively.[12] The Tariff Commission envisions the PCC to "build up a fund of economic and social policy expertise, which . . . will prove to be an effective knowledge base for policy advice and administration to ensure the development of the Philippine economy as a dynamic and internationally competitive market." This seeks to integrate industry-specific systems and consolidate all efforts to monitor and enforce a competition policy in the country. Enforcement of policies is currently performed by four key government offices: the Securities and Exchange Commission, the Bureau of

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[8] Culled from the Department of Trade and Industry's (DTI) Bureau of Trade Regulation and Consumer Protection-Fair Trade Division webpage.

[9] Tariff Commission's proposal on crafting a National Competition Policy and HB 116 by Representative Joey Sarte Salceda.

[10] These include the Alter Trade Corporation (ATC), the Southern Partners for Fair Trade Corporation (SPFTC), the Panay Fair Trade Corporation (PFTC), the People's Global Exchange (PGX), and the Advocate of Philippine Fair Trade Inc. (APFTI).

[11] http://r0.unctad.org/en/subsites/cpolicy/gvaJuly/docs/en9.doc.

[12] The OPAA will undertake research and analysis on contemporary regulatory/competitiveness issues and advise the PCC while the CCWA will be attending to the administrative functions of the proposed commission.

Import Services, the Bureau of Trade Regulation and Consumer Protection, and the Tariff Commission.

The Tariff Commission proposal finds resonance with the proposition put forward by Representative Joey Sarte Salceda under House Bill (HB) 116.[13] The commission's mandate will focus on "facilitating the implementation of the Philippine Competition Act, administering the provisions of the Philippine Competition Act, and generating, providing, and making available to the public information concerning fair trade practices." A salient function of the proposed commission pertains to protection of both business enterprises and consumers, specifically in the context of engaging in fair trade practices. The bill also details that the proposed body be composed of experts in business, marketing and consumer behavior, economics, and public administration. The apparent lack of representation from other stakeholders in the fair trade movement, specifically producer sectors, is a gap that the PFTF can fill.

THE PFTF AS A QUASI-GOVERNMENT AGENCY ON FAIR TRADE

With the above-mentioned proposals on establishing a Philippine Fair Trade Commission operating under different yet related philosophies, the creation of a quasi-government agency specifically tasked to integrate fair trade (as the fair trade movement defines it) in state policies is seen to be the most appropriate response. A quasi-government body, which may opt to receive direct support from government, has the capacity to operate freely from government bureaucracies that tend to slow down the implementation of programs and projects. It also has the advantage of being able to attract to its ranks the best in the field of both business development and community organizing. These quasi-government agencies also have the flexibility to implement systems and mechanisms that are not impeded by bureaucratic processes, which may facilitate a more efficient monitoring.

Currently there is no existing mechanism that would integrate fair trade in the state's trade policies. The PFTF as the collective representation of the fair trade movement may fill this void. PFTF member organizations' experience in implementing alternative livelihood programs—projects that are typically performed by government agencies—complements the government's efforts in undertaking poverty alleviation programs and projects that benefit SMEs in the countryside. This gives the network the advantage of being familiar with the workings of the state without necessarily being part of it. Another strength of the PFTF through its membership is its knowledge in introducing the concept and praxis of fair trade coupled with the unique combination of expertise on business development and community organizing. Formed as the policy-advocacy arm of the Philippine fair trade movement, the PFTF enjoys a considerable wealth of resources—expertise, finances, a broad network of organizations within and outside the Philippines—by virtue of its long history of engaging in development work and trading. The PFTF was seen as a locus where fair trade organizations can

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[13] An Act Creating the Philippine Competition Commission, Regulating and Penalizing Trade Practices that Lessen Competition and Other Anti-Competitive Practices and Conduct, Unlawful Mergers, Acquisitions and Combinations in Restraint of Trade, Unfair Competition, and Appropriating Funds Therefor, and For Other Purposes. This bill was filed during the First Regular Session of the Thirteenth Congress of the Philippine House of Representatives.

articulate issues and concerns of Philippine-based fair trade advocates and practitioners, and consolidate these into a coherent agenda not only within the country but also in regional and international fair trade formations. By virtue of its organizational network, it has the capacity to traverse the local, national, regional, and international arenas. In the local front, it has established links not only with producer and people's organizations but also with local government agencies and national government line agencies through its member organizations in performing its development and entrepreneurial initiatives. At the national level, it has worked with both the government and the private sector in promoting the tenets and practice of fair trade. In the international front, the PFTF's current membership in the regional fair trade organization—the Asia Fair Trade Forum and the International Fair Trade Association (IFAT), the lone international fair trade body composed of fair trade organizations from both developed and developing countries—provides the link to the international level where Philippine concerns on fair trade may be lodged.

Transforming the forum into a quasi-government body will enable a more formalized structure that includes representatives from government and the private sector, which are the targets of existing fair trade advocacy in the Philippines, aside from the existing board of directors consisting of representatives from various fair trade organizations. Such an arrangement also facilitates a more productive engagement between government, the private sector, and fair trade advocates and practitioners, without creating another state instrumentality that would make the advocacy terrain more difficult to navigate for fair trade organizations and other NGOs. This arrangement also makes it possible for the PFTF to raise its own funds from external sources for its operations, and work collaboratively with government in implementing complementary programs and access public funds. As such, the PFTF will be able to participate in government policy processes on matters relating to trade and consumer welfare.

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