

The Politics of the Retail Trade Liberalization Law of the Philippines: An Assessment of the Policymaking for R.A. 8762

Bing Baltazar C. Brillo

Department of Social Sciences, College of Arts and Sciences, University of the Philippines Los Baños, College, 4031 Laguna, Philippines. Corresponding author: Email: bbbrillo@yahoo.com.

This paper reports on studies for a PhD in Development Studies (by research) undertaken by Prof. Brillo at the De La Salle University, Manila, Philippines.

Abstract

The proposal to amend R.A. 1180, otherwise known as the Retail Trade Nationalization Act of 1954, was contentious as the shift from the protectionist to the liberalist mode was considered a drastic policy change. The proponents questioned the effectiveness as well as soundness of the law. They argued that the policy was outmoded, was not in tune with global capitalist development, and resulted in an inefficient industry. In the process, the stakeholders were drawn to two groups, those for liberalizing the retail trade and those for maintaining protectionism in the industry. The contradicting positions led to a passionate debate among the stakeholders and the policy actors. To understand the politics of policy change, several essential factors need to be examined: the context, the stakeholders and the cost-benefit equation, the rationale, the political resources and the concessions, and public perception. All these factors worked together to bring about the enactment of Retail Trade Liberalization Law or R.A. 8762 and the repeal of R.A. 1180. The experience illustrates the complexities of radical policy shift as well as the intricacies of policymaking in the Philippines.

Keywords: liberalization; Philippines; policy change; protectionism; Republic Act 8762; retail trade

Abbreviations:

- AFTA – ASEAN Free Trade Area
- CFR – Chamber of Filipino Retailers
- CUP – Consumer Union of the Philippines
- BOI – Board of Investments
- DOF – Department of Finance
- DOJ – Department of Justice
- DTI – Department of Trade and Industry
- GDP – gross domestic product

GNP – gross national product
KATAPAT – Kilusan Tungo sa Pambansang Tangkilikan
NAMVESCO – National Market Vendors Cooperatives
NEDA – National Economic and Development Authority
NEPA – National Economy Protection Association
PASI – Philippine Association of Supermarkets Inc.
PFA – Philippine Franchise Association
PIDS – Philippine Institute for Development Studies
PLDT – Philippine Long Distance Telephone
PRA – Philippine Retailers Association
R.A. – Republic Act
WTO – World Trade Organization

Introduction

Republic Act (R.A.) 8762 defines retail trade as “any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption.” As the undertaking is basically selling to the final user, retailing is considered an industry that ultimately links up with the Filipino consumers.

The proposal to amend the 45-year-old protectionist policy of the retail trade in the 1954 R.A. 1180 was considered contentious, as the shift from the protectionist to the liberalist mode is a drastic policy change. Opponents contested the move. Those benefiting from the current setup naturally took strong actions to maintain the status quo and preserve their advantage. Any radical change in society elicits suspicion and distrust among the people. The latter feared that politicians and powerful groups in society would use the occasion to further advance their interests at the expense of the public. Furthermore, xenophobic forces argued that opening the retail trade sector to foreigners was unpatriotic; and as a critical industry, the retail trade must be kept solely in the hands of Filipinos. In contrast, the proponents of policy change questioned the effectiveness as well as soundness of R.A. 1180. They argued that the policy was outmoded, was not in tune with global capitalist development, and had resulted in an inefficient industry. The contradicting positions led to a passionate debate among the stakeholders and the policy actors.

To understand the politics of policy change, particularly the radical shift from a protectionist to a liberal policy in the retail trade, several essential factors need to be examined: the context, the stakeholders and the cost-benefit equation, the rationale, the political resources and concessions, and public perception. This paper, based on a review of congressional documents and government data, is about the interplay of these factors in the enactment of R.A. 8762 and

the repeal of R.A. 1180, as the effect of each factor combined to bring about the policy change.

Framework of Analysis

Public policy is often broadly described as “anything a government chooses to do or not to do” (Dye, 1972). This definition implies that policymaking is a governmental activity where policy actors make formal decisions by enacting policies to address public issues or concerns. The policymaking process often consists of agenda setting, discussion, formulation, and approval of the policy. The process involves engagement among stakeholders: official government actors (i.e., the president, bureaucrats, senators, and congressmen) and societal actors (i.e., businessmen, workers, consumers groups, media, the religious sector, and international organizations). As the process requires interactions among policy actors and the resulting policy creates winners and losers among the stakeholders, policymaking is essentially a political game. Understanding the politics of policymaking, particularly the success and failure of policy change, necessitates the examination of the integral factors of the process (Figure 1).

Context

The context refers to the external political, economic, and social environment where the policy formulation process takes place (Birkland, 2001). The environment can obstruct or facilitate the mobilization of demand for the policy, as changing times can create incentives for the stakeholders to take action. Thus, policy actors must have the capacity to recognize windows of opportunity in the changing conditions. In effect, the context exemplifies the

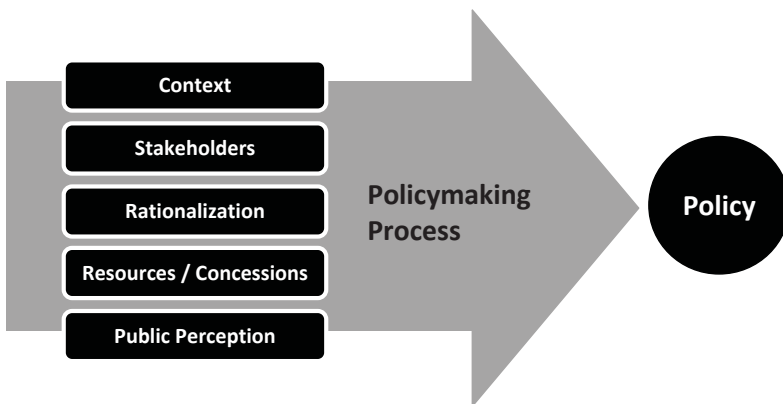


FIGURE 1. Factors affecting policy change

importance of timing, as the “right timing” can provide an ideal circumstance for setting the agenda of the policy.

Stakeholders

Stakeholders are key political actors whose influence is critical in the policymaking process. They are defined as “actors (persons or organizations) who have vested interest in the policy being promoted” (Schmeer, 1999). Their interests, declared or conceivable, should be taken into account, as they can potentially affect the dynamics of the process. “Political analysis should identify whose toes will be stepped on, who expect their toes to be stepped on, and how different groups are likely to react when their toes are stepped on, or when they think their toes will be stepped on” (Reich, 2002). Stakeholders’ participation as well as their support or opposition in pursuit of their interests may be seen as the ammunition by which the proposed policy will be settled.

Costs and benefits refer to the distribution of actual and perceived gains and losses among the stakeholders. Identifying the actual as well as potential winners and losers with regard to the policy is essential, as the apportionment of the costs and benefits exposes the process to potential conflicts or opportunities that can significantly affect the feasibility of the policy. One typical problem encountered by policy advocates is what Mancur Olsen (1965) called a collective action dilemma. The dilemma happens when the costs are immediately felt and concentrated on a small group while the benefits have long-term impact and spread to a larger group. This scenario creates strong incentives for the former and disincentives for the latter to mobilize for collective action. Moreover, the situation intensifies when, on one hand, the small group is highly organized, economically powerful, and politically well connected and the other or larger group is not organized, is economically weak, and politically less influential (Reich, 2002).

Rationalization

Rationalization refers to the arguments offered by policy actors to justify their positions and the policy. To be credible and compelling, arguments for a position must be logical, consistent with empirical evidence, and contemporarily relevant. The rationale for a policy must offer solution to a problem, be able to refute the counterarguments, and, more importantly, be able to project an aura of “correctness.” Specifically, rationalization must show that the advantages outweigh the disadvantages of the policy change. The goal is to alter the equation of stakeholders by convincing the undecided and reluctant actors and by strengthening the commitment of advocates.

Political Resources and Concessions

Political resources refer to the capacity to use power, authority, and money to influence the policymaking process by enticing allies and pressuring

opponents. Resources can be employed in many ways. They can take a benign form, such as informational support to enhance expertise, particularly the capacity to articulate and defend the policy position, or an audacious form, such as “side payments” (e.g., assurance of budget allocation and release of public funds, appointment to lucrative government positions, or outright cash in the form of bonuses) to create incentives to directly influence the behavior of policy actors. Here, the policymaking process is considered a transaction, where bargains and exchanges take place among policy actors (Stein et al., 2005). Each transaction entered into bears costs, and these costs are paid off through side payments (Haggard and McCubbins, 2001). The use of side payments in a political environment where patronage politics persists and elections are expensive can be very enticing for actors to climb the bandwagon for or against the policy.

Concessions in policymaking refer also to bargains and exchanges where the policy actors negotiate among themselves the content and the final form of the policy. The bargains and exchanges among policy actors are a give-and-take process that usually results in compromises, as policy proponents try to accommodate the demands of the opposition (Howlett and Ramesh, 1995). Concessions are needed to persuade doubting lawmakers, to appease the opposing lawmakers, and to erase fears on the side of the public. Concessions over the policy are made by inserting stipulations, removing provisions, or attaching exemptions. The effect of the practice is twofold: one, it dilutes the policy, and two, it ensures the passage of the policy.

Public Perception

Public perception refers to the shaping of public opinion. Influencing public perception is important in policymaking. In a political system where lawmakers seek to win elections, public opinion is critical to influence the behavior of policy actors. As rule of thumb, lawmakers usually go along with and rarely go against popular opinion. It follows that winning the battle for public perception would translate into pressures on the lawmakers, a boost for the policy proponents, and marginalization for the opposition.

The key is to create in the public mind the idea that the policy serves the public well-being. Policy advocates not only must be cautious in presenting the issue and alternatives but must also use language suitable for the public audience. At present, media is the main platform used to reach out to the public. In an open and competitive political environment, effective handling of media is essential to convey the “right” message to the people.

In a democracy where policy proposals go through the political process and are decided by votes, care in considering the right timing, accounting of interests, appreciation of costs and benefits, proper rationalization, employment of resources, utilization of bargains and exchanges, and the shaping of public opinion can translate into a greater chance of enacting or stalling the proposed

policy, as those factors can result in more supporters, greater pressure, and voters for the policy. In this paper, the engagement and interplay among these factors will be surveyed to present an analytical narrative of the enactment of the Retail Trade Liberalization Law or R.A. 8762. The study will focus on how the integral factors worked together to bring about the law.

Results and Discussion

Context

In 1954, the Philippine Congress passed a landmark law, R.A. 1180, otherwise known as the Retail Trade Nationalization Act. The law's protectionist policy was designed to break the control of aliens in the retail trade business, as the retail sector was considered a critical segment of the economy. In particular, the intention was to prevent Chinese retailers, who were not citizens, from controlling the industry. As aptly observed by Agpalo (1962), the primary irritating factor that instigated the nationalization of the retail trade was the alien domination of the industry. The enactment of the law was in keeping with the rising nationalist sentiment at the time, that vital industries must be in the hands of citizens.

With the advent of the 1990s, the effectiveness as well as soundness of R.A. 1180 was questioned. First, the critics argued that the policy had outlived its usefulness. The law was designed to protect Filipino retailers from the dominance of Chinese immigrant retailers, who at the time controlled around 60% of the industry (Agpalo, 1962). But with mass naturalization, in particular with Chinese marrying Filipinos, alien retailers became citizens. Hence, absorption of the Chinese ironically made the protectionist policy ineffectual against them. An unintended consequence of the assimilation process was that R.A. 1180 protected the Filipino-Chinese that it originally intended to exclude and shielded them against foreign competition.

Second, the critics argued that the policy did not translate into growth in the retail trade industry. The law was in tune with the economic independence strategy, where development was achieved through government protection and intervention. In this strategy, the government needed to ensure that the retail trade industry was firmly under Filipino control. However, after four decades of implementing R.A. 1180, the Philippine retail sector could grow to only 10.9% of the gross domestic product (GDP) compared with the approximately 18% standard among Southeast Asian countries that had fully opened up their retail trade sector (Patalinghug, 1996). The data show that the Philippine retail trade industry was lagging behind and that there was more room for growth.

Both insights on R.A. 1180 were underpinned by the global paradigm shift in economic thinking. From the 1980s onward, neoliberalism had become the dominant economic philosophy, as most countries adopted liberal policies in

their pursuit of development. Following the core liberal economic principles of deregulation, privatization, foreign investment, and free trade, the post-EDSA Philippine governments have steadily embraced policies such as lowering of tariff, loosening of foreign exchange controls, and opening the banking sector to foreign investments. Thus, it is logical to expect the retail trade industry to accept liberalization and thus follow the liberalization of the other sectors of the economy. Moreover, affiliation with the World Trade Organization (WTO) and the ASEAN Free Trade Area (AFTA) has strengthened the commitment of the Philippine government to liberalize the economy.

These premises ushered in the clamor for the repeal of R.A. 1180. The economic think tanks of the Estrada administration called for the scrapping of the policy. They argued that reforming the retail trade law was long overdue and the protectionist policy was no longer in tune with the times. For instance, the advent of Internet retailing made it very difficult for countries to prevent foreign businesses from selling directly to their people. The economic managers from the National Economic and Development Authority (NEDA) stressed that the timing for making drastic policy change was right. Opening up the remaining protectionist industry, the country would be sending a strong signal to the world that it was serious in embracing free trade and that the liberalist economic policies of the government had continuity and consistency—with the Estrada administration continuing the liberalization program of the previous regimes. Moreover, the timing was also right to take the bold action of liberalizing the retail trade sector. As the country in Southeast Asia that was least affected by the 1997 financial crisis, the Philippines was in a good position to attract foreign investors while other Southeast Asian countries were still reeling from the effects of the crisis.

Stakeholders

In the process of repealing the Retail Trade Nationalization Act, the stakeholders took one of two positions: those in favor of allowing foreign investors in the retail business and those who wanted to keep the retail trade sector exclusively to Filipinos. The first group comprised those proposing policy change and liberalization or opening of the retail trade while the second group opposed the change and advocated the continuation of the protectionist policy in the retail trade.

The executive agencies were at the forefront of the effort to promote policy change. Because the bill was sponsored by the administration, executive agencies such as the Department of Trade and Industry (DTI), the Department of Finance (DOF), NEDA, the Board of Investments (BOI), and the Philippine Institute for Development Studies (PIDS) actively participated in crafting and deliberating on the bill. The bill was supported by the main consumer group in the country, the Consumer Union of the Philippines (CUP); international business groups, such as the American Chamber of Commerce, the European

Chamber of Commerce, and the Australian and New Zealand Chambers of Commerce; and local business groups, such as the Philippine Chamber of Commerce and Industry and the Federation of Filipino-Chinese Chambers of Commerce and Industry. On the other side, the key opposing groups that actively participated in the policy deliberations were mostly retail business organizations and their affiliates, such as the Kilusan Tungo sa Pambasang Tangkilikan (KATAPAT), the National Economy Protection Association (NEPA), Philippine Retailers Association (PRA), the Chamber of Filipino Retailers (CFR), the Philippine Association of Supermarkets Inc. (PASI), the Philippine Franchise Association (PFA), and the National Market Vendors Cooperatives (NAMVESCO).

The proponents for the liberalization of the retail trade were in consensus that opening the industry to foreign investors was the right economic strategy. However, there were also disagreements among them. For instance, a major divergence was in the form of the safety net mechanism that must be incorporated in the policy. Two positions took shape: one was for a minimum capitalization requirement for foreign investors, and the other was for an assessment of the track record of the foreign investors. On one hand, the DTI, the BOI, and the DOF pushed for the minimum capital requirement of \$1 million for 100% foreign equity, \$500,000 to less than \$1 million for 60% Filipino and 40% foreign equity, and less than \$500,000 for 100% Filipino equity. On the other hand, the main sponsor of the bill, Senator Sergio Osmeña III and the NEDA were for examining the track record of foreign investors. They argued that the focus should not be on quantity, but on the quality of people coming in, as quality investors would be more inclined to expand their business activity after they have tested the waters, so to speak.

Those opposed to the bill were in agreement that liberalizing the retail trade would be harmful to Filipino retailers and to the economy. Their common theme was to block the passage of the repealing bill. However, there were also differences in the position of the groups. For instance, PFA was against repealing the law, yet it accepted the inevitability of liberalization. Thus, the members pleaded for partial rather than full liberalization of the industry. PRA admitted that liberalization was good; however, the members believed that the timing was wrong, as the country was still reeling from the Asian financial crisis.

The proposed bill was controversial. Stakeholders considered it radical as the change would constitute a policy shift from protectionism to liberalism. Among the stakeholders, the distribution of costs and benefits was delineated. The perceived principal gainers from the repeal of the policy were the Filipino consumers, manufacturers, farmers, and small retailers, particularly the operators of *sari-sari* stores or small neighborhood convenience stores. On the other hand, the perceived biggest losers with the entry of foreign retailers were the local medium-sized and big retailers. It was thought that the costs would be borne

solely by these groups, which would lose their monopoly of the local market and the government protection against direct foreign competition that they had been enjoying since 1954.

The perceived costs and benefits also created a dilemma. On one side, the losses would be immediately felt and concentrated on the medium-sized and large retail businesses; on the other side, the gains would take a longer period to be felt and would spread to a very broad mass of people. In effect, it was believed that the costs would be shouldered by a relatively small sector of the economy while the benefits would be felt by the whole society itself, as anyone can be identified as a consumer. On the part of the Filipino retailers, the dynamics generated a strong motivation to mobilize collective action against the bill. Their collective action was deemed influential as the sector was known to be well organized, financially well-off, and politically connected. This strength was exemplified by their capacity to block the bill a number of times since 1995 and by their passionate and well-orchestrated appeal during the legislative deliberations.

Rationalization

The opponents of the policy change argued that R.A. 1180 was still valid at the time (1990s). They said that the retail trade industry, as a critical sector of the economy, must be protected against foreign competition and must be controlled by Filipinos who have a permanent stake in the well-being of the country. They also were skeptical of the outcome of competition, as they foresaw a one-sided contest. The entry of foreign retailers with their capital and technological and other advantages could easily translate into uneven competition. For instance, they could use their financial muscle to resort to predatory pricing to eliminate competition. In addition, some in the opposition strongly believed that local retailers were still unprepared and needed some more time to get ready for competition. They suggested that Filipino retailers be given time to allow them to adjust.

For the opposition, pressing on with policy change would put many local retailers out of business. They predicted that massive displacements and closures would ensue, resulting in net job losses in the retail trade sector. The increase in unemployment would eclipse any gains in the reduction of prices of goods brought about by competition. To rationalize their position, they cited studies such as “When Corporations Rule the World,” which discusses the phenomenon called “Wal-Martization,” where the entry of mega global retailers in a particular locality causes sales of local stores to go down and local retail businesses to perish (Korten, 1996). They warned that the entry of foreign retailers would not automatically reduce prices, given the multitude of components that determine the price of goods (e.g., transportation cost, utilities, raw materials). If foreign retailers deemed the cost of operation high, then prices would not go down.

Moreover, some opposing lawmakers were suspicious of the move to fast-track the repeal of R.A. 1180. For instance, Congressman Wigberto Tañada suspected that the action of the administration and its allies had something to do with the release of loans to the government, as international financial institutions had made the passage of the law a condition for the release of the loans.

Others tried to block the liberalization of the retail trade industry on constitutional grounds. The main argument, as expressed by Congressman Erico Aumentado, was that repealing the law would violate the Constitution, specifically article 2, section 19, which states that “the State shall develop a self-reliant and independent national economy effectively controlled by Filipinos”; article 12, section 1, which states that “the State shall protect Filipino enterprises against unfair foreign competition and trade practices”; and article 12, section 10, which states that “the congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly-owned by Filipinos.”

The UP Law Center sustained the opposition’s contention by expressing the opinion that allowing alien participation in the retail industry would negate the constitutional mandate that the economy should be effectively controlled by Filipinos. However, the Department of Justice (DOJ) Opinion no. 155, dated December 24, 1998, signed by Secretary Serafin Cuevas, gave a contradicting position, as it declared that the bill at hand had no constitutional infirmity. The DOJ found no legal or constitutional obstacle to the opening of the retail trade sector to foreign investors. Moreover, the DOJ also acknowledged that the policy change was within the powers of Congress to make, as the legislature has the authority and discretion, subject to those expressly reserved by the Constitution for Filipinos (i.e., public utilities, natural resources, mass media, and educational institutions), to determine the type or manner of investments open to foreigners.

In contrast, the proponents for policy change argued that the fundamental premise for repealing R.A. 1180 was that the protectionist policy resulted in an industry controlled by few players. The oligopoly created brought about the decline in the comparative and competitive advantage of the industry. Consequently, consumers were made to pay for the inefficiency of Filipino retailers, and this inefficiency translated into high prices and low-quality goods. To deal with the problem as well as to break the control of the cartel, the industry needed to be subjected to healthy competition. As there were not enough big local capitalists who were willing to invest and challenge the dominance of the few controlling players in the retail industry, it became necessary to invite foreign retailers. Thus, the retail trade business must be exposed to the full force of foreign competition—the more players, the better for the industry.

As the central justification for policy change, the promotion of competition in the retail trade industry was theoretically rationalized by the concept of a contestable market. In describing the concept, Mario Lamberte of the PIDS

stated, “It doesn’t matter whether you have two producers or one thousand producers or one producer. What is important is that one will behave like a competitor. And the only way we can force him to behave like a perfect competitor is to threaten him.” The theory implies that what is important is the presence of countervailing forces to guarantee competition and ensure efficiency among the players in the industry. NEDA Director General Felipe Medalla affirmed that an efficient operator forces other operators to be efficient as well. He cited the case of Malaysia, where evidence shows that with the entry of foreign investors, the domestic enterprises showed much higher productivity. Here in the Philippines, liberalization in banking, telecommunications, shipping, and insurance showed beneficial impacts. For instance, in the telecommunication industry, the Philippine Long Distance Telephone Company (PLDT), which held a virtual monopoly in the past, had become more efficient in the face of competition. Thus, the “transformation” of PLDT benefited the consumers as well as the company. As the joke goes: in the past, it took PLDT 10 years to provide one with a telephone that had no dial tone. Now, it gives you a telephone, complete with dial tone, in 10 days.

Thus, liberalization of the retail trade sector was expected to help address the following major problems confronting the country:

1. *Economic problem.* The net effect of the entry of foreign retailers could be an increase in economic activity and employment, as expansion of the economy could be greater than displacement. For instance, tourism would be promoted because the greater availability of goods ranging from the cheapest in the market to high-end products could create a well-rounded shopping profile (e.g., new shopping capital in Asia) that would make the country more attractive to tourists. Moreover, the expansion of the industry could lead to the creation of jobs through subcontracting arrangements with the retail outlets for the supply of raw materials.
2. *Financial problem.* The deficiency in local capital investment would be resolved by the influx of foreign capital. Domestic savings are too low to be the source of capitalization. As Senator Ralph Recto noted during the deliberations on the bill, in 1994 the gross domestic savings as a percentage of the gross national product (GNP) was only 18% in the Philippines compared with 30% in Indonesia, 35% in Thailand, 37% in Malaysia, and 51% in Singapore.
3. *Management problem.* The pressure from competition would force local retailers to be efficient, innovative, and flexible. The presence of foreign players could also expose the retail sector to newer management systems and technology transfer. The archetype of this development is Jollibee, the local fast-food company that adopted and utilized the technology and expertise of McDonalds, its main competitor, to edge out the latter in the fast-food business.

4. *Inflation problem.* Competition and the quest to gain market share would help bring down the prices of commodities. Lower prices of goods, if attained, could translate into less pressure from the demand for an increase in salaries and into more savings to the consumers.
5. *Export market problem.* There would be reciprocity in opening the retail trade sector. It would follow that opening the economy would lead other countries to also open their market to Filipino products. Moreover, the entry of global retailers would enable them to identify locally produced products that could be sold in their other retail establishments around the world.

Liberalization of the retail trade sector was also seen as a means to level the playing field for manufacturers and retailers. The NEDA argued that in the status quo, the manufacturers' bargaining position was weaker than the retailers' as the former had much more limited choices of big retailers to use. One consequence of the current practice, according to the DTI, was that manufacturers were usually paid either after 30 to 180 days, instead of outright cash, or only for goods sold by the retailers in the case of consignment. Another consequence was that small manufacturers had little chance of penetrating the market. This is exemplified by the case of Daila Herbal, where the small entrant manufacturer of soap was asked to pay for a space in a supermarket. This dilemma was echoed by Senator Osmeña who said that to put up a display inside Rustan's Department Store, a small-time manufacturer must pay P10,000 per square meter. Thus, if there were more retailers, the manufacturers could have more choices and they could look for retailers who could pay in cash or provide a better deal.

Furthermore, small retailers, who according to the DTI comprised 96%, were the largest segment of the retail industry and were projected to be minimally affected by the policy change. The *sari-sari* stores have distinct advantages over huge local retailers that the former could exploit when confronted by the influx of foreign retailers. *Sari-sari* stores are location-specific and occupy a special market niche based on convenience and unique services. For instance, *sari-sari* stores sell goods piecemeal (e.g., one can buy a stick of cigarette) and offer exceptional credit terms (e.g., payment is made after the buyer receives his salary). In addition, small retailers would also have more alternatives to source their goods. *Sari-sari* stores are clients of big retailers because their sourcing volume is too small to be serviced directly by manufacturers. The experience of Makro illustrates this case. Makro's entry significantly improved the sourcing of cheaper supplies for *sari-sari* stores.

On the issue of the displacement that competition might bring, Director General Medalla admitted that "competition brings about greater efficiency although competition does displace people. So the question really there is how you balance benefits from competition with the cost of dislocation [that]

competition brings about.” The adverse consequence, however, was portrayed as acceptable since overall, the net effect of policy change is deemed positive for the economy. He added that the feared displacement was overblown, as the entry of foreign retailers does not equate to zero-sum game—the obliteration of local retailers. One reason is that the opening up of the retail trade sector, based on the experience of other countries, does not automatically result in a flood of foreign retailers coming to the country; usually, it takes some time for them to come in. Filipino retailers also had some advantages that they could use against foreign retailers, e.g., familiarity with Filipino preferences, local culture, market terrain, and business climate. Moreover, there was no guarantee that foreign retailers considered as big players compared with local retailers would be successful in their business venture. For instance, as pointed out by Senator Osmeña, global giant retailers such as Wal-Mart and J.C. Penney failed miserably in their venture in Indonesia, as local retailers repositioned and reinvented themselves to successfully compete with foreign retailers. Another is the experience with the Foreign Investments Act of 1991. The experience proved that the initial fear—the entry of foreign investors in the country would gobble up the local businesses—was unfounded.

Political Resources and Concessions

In the move to repeal R.A. 1180, the Estrada administration certified the bill as urgent in Congress. The position of the administration was formally conveyed to the lawmakers through a letter sent by Secretary Jose Pardo, informing them that President Joseph Estrada expected the bill to be prioritized by Congress. In line with the directive, the government agencies, particularly the DTI and the NEDA, provided the information and materials needed in support of the passage of the bill. The materials were fed to the sponsoring lawmakers to enhance their knowledge and arguments during deliberations in Congress. The executive agencies also provided the working draft of the bill and served as “consultants” in the final drafting of the law. For instance, the BOI was in constant touch with the lawmakers from the committee hearings up to the Bicameral Conference Committee.

A critical factor in the enactment of the law was the perceived influence of the Office of the President over the lawmakers. Despite the limitations imposed by the 1987 Constitution, the executive continues to hold sway over Congress. In Philippine politics, the unwritten rule is that the legislature follows the president, not the other way around. An example of this is the continuing influence of the president on the selection of leaders in both chambers of Congress. The person elected as the Speaker of the House or the Senate President usually has the blessings of the sitting president. Another is the legislators’ perennial practice of climbing on the president’s bandwagon by affiliating themselves or their parties. The influence of the president over Congress emanates from the power over the purse, in particular, the power to

control the release of budgetary funds. In an arena where patronage politics is prevalent, the “pork barrel,” which is used to fund the projects of lawmakers, is perceived to be crucial to their political survival (Caoili, 2006). The executive influence over the repeal of R.A. 1180 could be inferred from the retort of Senator Osmeña against the continuous and vehement objection of the retailers group to the bill—that if they want to block the bill, they should go and talk to Malacañang. The statement revealed the real force behind policy change. Furthermore, the support of President Estrada, who was still very popular at the time, made the opposing lawmakers realize the difficulty of blocking the passage of the bill. Recognizing the situation, the opposing lawmakers, as an alternative recourse, focused their efforts on influencing the content of the bill.

An issue in the repealing bill that needed concession was the safety net concern. The objectors argued for a guarantee that would provide security to Filipino retailers. To address the apprehension, particularly the fear on the psychological level among the Filipino retailers, the proponents agreed to incorporate in the bill the following safeguard proposals:

1. Retail trade enterprises with a paid-up capital of less than \$2.5 million are reserved exclusively for Filipino citizens and corporations.
2. Foreign investors interested in acquiring shares of existing local retailers may purchase only up to a maximum of 60% of the equity within the first two years from the effectivity of the repealing law.
3. Retail trade enterprises where foreign ownership exceeds 80% must offer a minimum of 30% of their equity to Filipinos through any stock exchange in the Philippines within 8 years from their start of operations.
4. The DTI must prequalify all foreign retailers before they are allowed to conduct business in the Philippines. For instance, to preclude fly-by-night retailers, the DTI requires foreign retailers to have at least 5 retailing branches in operation anywhere around the world as well as have a 5-year track record in retailing.
5. Only foreign retailers coming from countries that allow the entry of Filipino retailers would be permitted to engage in business.
6. At least 30% of the stock inventory of foreign retailers, after 10 years from the effectivity of the law, must be Philippine made.
7. Qualified foreign retailers are not allowed to use rolling stores or sales representatives, or engage in door-to-door selling or the restaurant business, or run *sari-sari* stores.

The key proponents of repealing the bill, however, did not believe that such safety net provisions were necessary. For instance, the NEDA stated that if the law would put in too many ifs, buts, whys and wherefores, then the government would be sending a signal to the world that we are not serious in

opening the retail sector. Nevertheless, the proponents accepted the reality that radical policy change arouses deep-seated suspicion and distrust. Moreover, the consensus among them was that without the stipulations, passing the bill in both Houses would be much more difficult. To mitigate the complications, the proponents decided to be practical and accommodated the demands. The importance of concessions is summed up in the statement of Senator Osmeña: “I just did it to appease some of the objectors to the bill.” Thus, the compromise assured the enactment of R.A. 8762 and the repeal of R.A. 1180.

Public Perception

The proponents of R.A. 8762 framed the policy as a consumer welfare act and as an antidote to an inefficient industry. They agreed that the industry had been enjoying protection for a long time and that this protection had given rise to cartelization where the few big retailers, without genuine competition, enjoyed large profits at the expense of the consumers. Opening the industry to foreign competition would, in the long run, result in lower prices, better services, and higher quality of goods. For instance, Senator Recto stated that the “retail trade bill does not intend to solve all these problems; nevertheless, it is a step forward in promoting efficiency in the economy. If we would like to ensure that the cost of production, that the total economy is efficient, one way of doing this is to promote competition.” Thus, the repeal of R.A. 1180 was publicized as critical for the sitting Congress to enact if the legislators wanted to empower the Filipino consumers and revitalize the retail trade sector.

The policy proponents also took deliberate actions to counteract the propaganda of the opposing stakeholders. For instance, on the perceived detrimental effect on the local retailers, the advocates declared that the Filipino consumers’ welfare took precedence over all concerns, including the interest of a sector of the economy. They admitted that policy change would have pains, but the gains would be larger than the costs. On the issue of nationalism equated with protectionism, where the opponents of the policy argued that Filipino retailers should be amply shielded against foreign competition, the proponents were quick to spread the view that protectionism was archaic and equivalent to economic stagnation. Furthermore, they propagated the idea that it would be futile for the country to oppose the global march of liberalism and that the only logical move was to abandon the protectionist policy and embrace the liberalist policy.

Concluding Comments

In the beginning, the context was the driving force that propelled the demand for the policy of liberalization. The global paradigm shift toward economic liberalism created an atmosphere ideal for policy change. The policy

proponents argued that, as a protectionist policy, R.A. 1180 was passé and would not promote the economic development of the country. In the process, the stakeholders formed two groups: those for policy change or for liberalizing the retail trade and those for the status quo or for maintaining protectionism in the industry. Opening the retail trade sector to foreign retailers was contentious as the move constituted a radical change in policy. Compounding matters, the perceived costs and benefits created a collective action dilemma, as the losses would immediately be felt and concentrated on a particular sector while the gains would be long term and will spread to a broad group of people.

The collective action dilemma in part was offset by better rationalization for policy change. The rationale was potent, as it was well grounded theoretically as well as reinforced empirically. The theoretical foundation was based on the concept of a contestable market, where the presence of a genuine competitor is necessary to ensure competition and an efficient industry. Empirically, liberalization of the retail trade sector was offered as an effective way of addressing the economic ills faced by the country. In addition, the relative successes of past liberalist policies in other industries (e.g., banking, telecommunications, shipping, and insurance) had a strong persuasive appeal. Thus, the potential adverse consequences of policy change were rendered acceptable as the net effect would be beneficial to the economy.

Because policy change was an administration bill, the resources of the government were put behind it. A critical factor is the compelling influence of the president over Congress. This advantage was supplemented by information disseminated to counteract the opposing propaganda as well as address the public's apprehension. Moreover, concessions added flexibility to the proponents, as they used compromise on the contents of the law to appease and accommodate the demands of the opposition. All those factors worked together to bring about policy change. Thus, the enactment of R.A. 8762 exemplifies the dynamics among the several essential factors in the policymaking process, as this engagement and interplay guaranteed the passage of the law. The experience illustrates the complexities of a radical policy shift as well as the intricacies of policymaking in the Philippines.

Acknowledgment

The author wishes to thank the anonymous reviewers but assumes full responsibility for the overall content and integrity of the manuscript.

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