

How did the ST Law level the tax
treatment of imported and local
distilled spirits?

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Background

- July 29, 2009. The EU and the US filed a complaint against the PH at the WTO.
 - Allegation. Violation of PH obligation re national treatment.
- October 2009 and January 2010. Consultations held between PH and EU and the US.
- April 2010. Panel was formed on this dispute by the WTO.

Background

- Panel heard the case in two meetings between April 2010 and August 2011.
- August 2011. The panel ruled in favor of the complainants.
- September 2011. PH appealed the case to the WTO Appellate Body, which in turn upheld the panel's report in December 2011.

Background

- February 22, 2012, the WTO Dispute Settlement Body upheld the findings of the panel and ruled that the Ph violated its NT obligation.
- January 2013, the PH notified the WTO that it complied with the decision with its passage of the Sin Tax Law.

Purpose

- This policy note assesses how the ST Law (RA) corrected the tax discrimination against imported distilled spirits.
- It turns out that the law had over-corrected and as a result discriminated against local spirits.

What's the case about?

- In 2004, Republic Act No. 9334 increased excise taxes imposed on alcohol and tobacco products.
- The resulting rates taxed imported spirits at a higher rate in violation of the national treatment obligation of PH.
- Art. III.1 and III.2 of the GATT says that imports should be taxed at rates no higher than subjected to internal taxes or charges in excess of “like” domestic products or give them the same national treatment as local products.

What are distilled spirits?

- Alcoholic beverages produced through the fermentation of “sugars” which include glucose, maltose, dextrose, fructose, and sucrose.
- Brandy, rums, vodkas, tequillas, whisky.
- Materials can come from any materials that contain the “sugars”.
- In Ph, spirits are processed from sucrose.

2004 Excise tax rates

- Spirits made from designated materials (sap of the nipa, coconut, cassava, camote, buri palm, or from sugar), PhP 13.59 per proof per liter (ppl).
- Other distilled spirits made from non-designated raw materials
 - PhP 146.97 ppl if NRP per .75 l bottle is < PhP 250;
 - PhP 317.44 ppl if NRP is PhP 250 ≤ and < PhP 675;
 - PhP 634.90 ppl if NRP is ≥ PhP 675.

Ph Defense

- The tax treatment makes no distinction between the countries of origin of the products.
 - rather on the raw material base of the spirit.
 - E.g. rums from Caribbean.

Ph Defense (2)

- Sugar-based and non-sugar-based distilled spirits have different organoleptic properties, resulting in disparate chemical composition and cogener content.
 - They are not “like” products.
- A more specific HS subheading such as 6-digit would differentiate the products, rendering them as not “like” in that tariff classification level.

Ph Defense (3)

- The degree of market penetration and access to the Philippine consumer market of imported distilled products is low at 1.2%.
 - Market segmentation.

Sin Tax Law (RA 10351)

- January 1, 2013 – Dec 31, 2014
 - (a) the ad valorem tax rate of 15 percent of the net price per proof volume of the spirit, and
 - (b) the specific tax rate equal to PhP 20 per proof volume
- January 1, 2015 onward
 - Ad valorem rate up to 20 percent
 - the specific rate goes up at the rate of 4 percent each year to account for inflation starting Jan 1, 2016.

Effective Tax Rates

$$\tau = 100\% \frac{t_1}{p / PL} + t_2,$$

where τ is the equivalent ad valorem tax rate; t_1 is the specific excise tax rate; PL (proof liter) is the volume in liters multiplied by the proof of the spirit and t_2 is the ad valorem tax rate in percent; and p is the net retail price per liter. Before the Sin Tax Law, t_2 was zero.

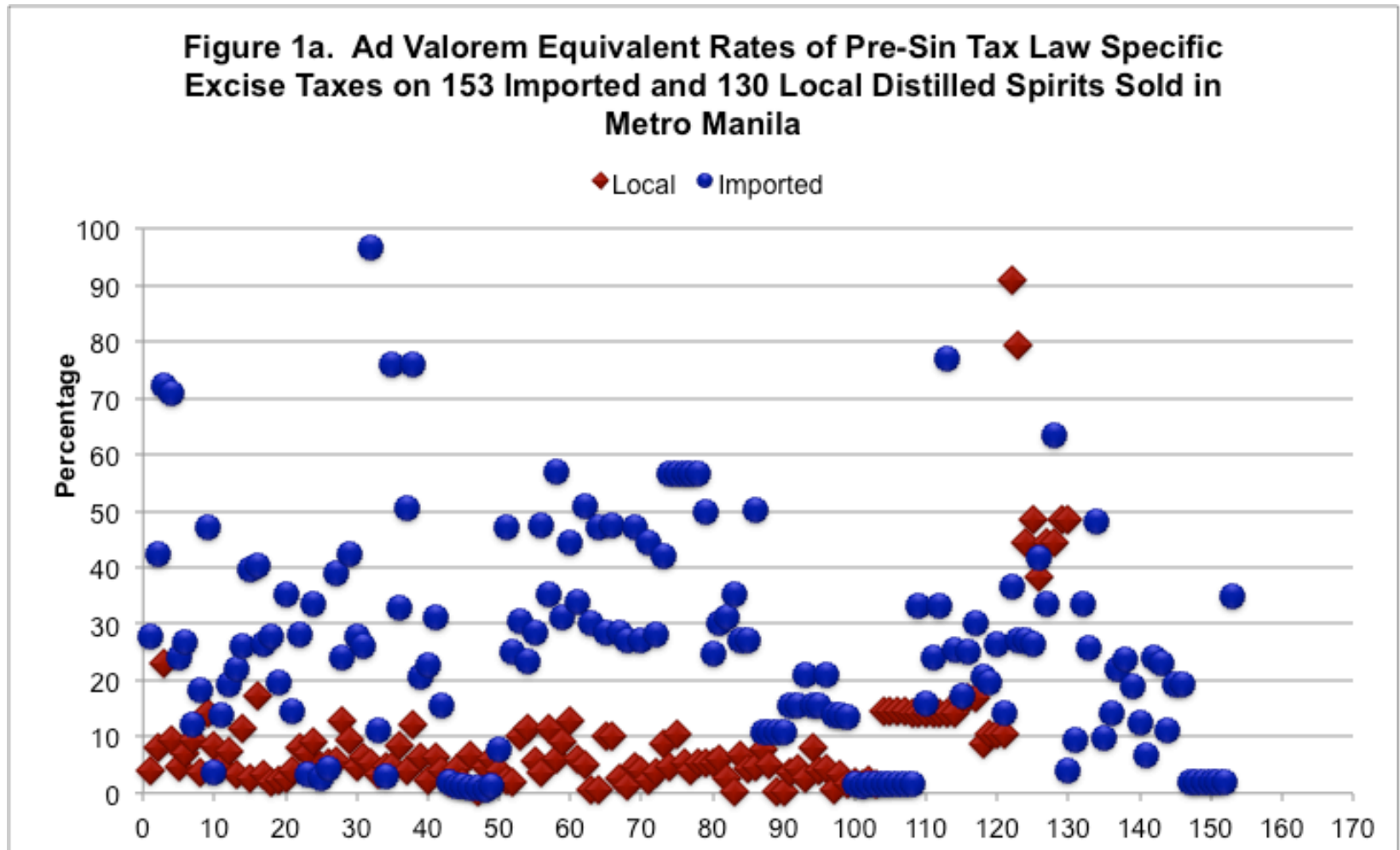
Data

- Came from a survey done by the Distilled Association of the Philippines (DSAP).
- DSAP did two price surveys of spirits sold in Metro Manila in April and September 2010.
- The April survey comprised 23 brands, nine of which were imported, and the rest were locally produced.
- Five categories of spirits included, namely brandy, gin, rum, vodka and whisky.

Data (2)

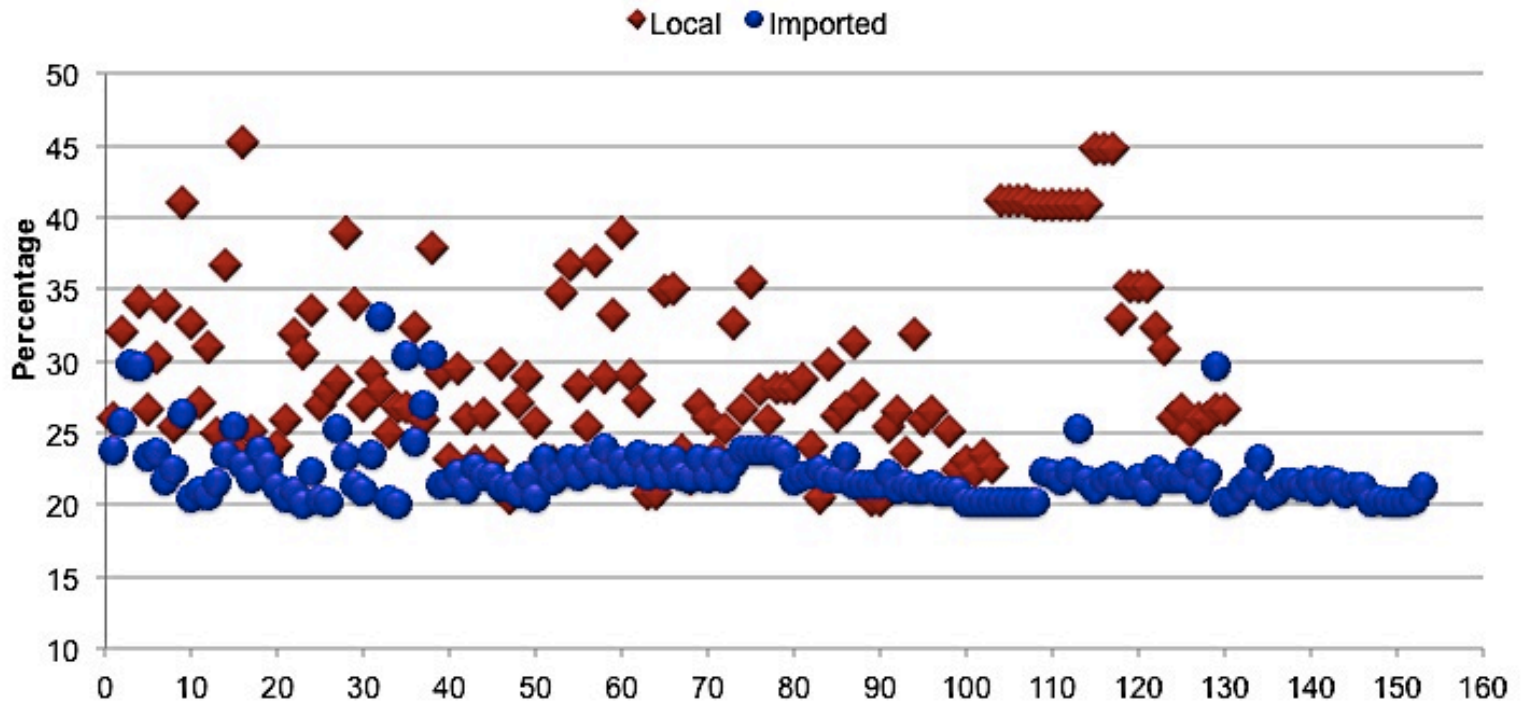
- The second price survey included more categories of spirits (tequila and others were added) and covered a total of 339 distilled spirits. Fifty eight percent (58%) of the sample were imported spirits.
- The price data were validated. Those products whose prices could not be validated as accurate were excluded. The remaining data, which this study used in computing the equivalent ad valorem tax rates, included only those spirits whose prices were validated to be accurate.
- Out of about 339 spirits covered by the DSAP survey, only about 283 products, of which 153 or 154 percent were imported spirits, had accurate prices.

Results: Before STL



Results: After STL

Figure 1b. Ad Valorem Equivalent Rates of Post-Sin Tax Law Excise Taxes on 153 Imported and 130 Local Distilled Spirits Sold in Metro Manila



Note: Post-Sin Tax Law Tax Rates are those for 2015.

Summary of Results

	Before STL		After STL	
	Imported	Local	Imported	Local
Minimum	0.56%	0.27%	20.10%	20.40%
Maximum	273%	130%	33.16%	53.80%
Simple mean	27.47%	10.07%	22.25%	29.81%

- Generally, ETRs were reduced.
- ETRs are now more uniform.
- However, local spirits now have higher ETRs than imported spirits.

Average ETRs by Type of DS

Table 1. Average ad valorem equivalent tax rates of excise taxes on distilled spirits (in percent)

	No. of products		Pre-Sin Tax Law		Post-Sin Tax Law	
	Imported	Local	Imported	Local	Imported	Local
Brandy	38	22	31.82	7.36	23.58	30.83
Gin	3	26	24.81	5.67	21.69	28.35
Rum	8	18	2.95	6.51	21.60	29.58
Tequila	5	6	26.78	3.12	22.14	24.59
Vodka	54	18	27.54	4.87	21.97	27.17
Whisky	29	6	36.86	4.52	22.04	26.65
Others	16	34	12.84	22.03	20.93	33.26
All Brands	153	130	27.47	10.07	22.25	29.81

Source: Author's computation

More specific results

- Imported whisky products had the largest decline.
- While all imported spirits experienced a cut in ETR, this was not the case for imported rums. The average ETR for rums, which used to be at 2.95 percent before the Sin Tax Law, rose to 21.60 percent.
- The average ETRs of all locally processed spirits went up under STL. The new ETRs were at least 1.5 times higher than their pre-STL levels.
- Local tequilas had the highest increase by the multiple of 7.89.

Implications

- Raising the ETRs would not automatically raise excise tax yields on local spirits.
- Reducing the ETRs of presently imported spirits will still make them unaffordable to the majority of Filipino consumers.
- The combination of ad valorem and specific excise taxes make calculation of tax payments difficult.
- Governance problems

Implications (2)

- The combination of ad valorem and specific excise taxes make calculation of tax payments difficult.
- “... going around in circles”, says a local producer.
 - product specification depends upon the price, but the price also influences the specification.
- Possible evasion problems due to higher ETRs of local spirits.

What can be done (but not immediately)

- Use plain ad valorem rates

Thank you.