

THIRTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
First Regular Session

'04 JUN 30 P5:39

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SENATE

S. No. 452

Introduced by Senator S. R. Osmeña III

EXPLANATORY NOTE

Foreign investments are important to the Philippine economy, especially to bridge the gap between savings and investments, in the light of the country's low savings rate. Foreign investments have proven useful, for example, in financing infrastructure development projects.

Countertrade refers to various forms of trade financing in which an international sale of products, services and technology is conditional upon a sale in the opposite direction involving payment primarily in goods and services in lieu of money. In other words, countertrade is a mechanism which could benefit the Philippine economy in two ways: 1) as method of financing the huge investments needed for development; and 2) as a way of developing market access for Philippine exports of goods and services.

This bill proposes a national policy on countertrade in order to facilitate mutually beneficial transactions between the Philippines and our trading partners. Some of the salient features of this bill are as follows:

- a) All countertrade agreements shall meet the criteria that relate to price, commercial viability, quality and level of technology, social benefit, and access to new markets in accordance with existing import, export and foreign exchange procedures, and rules and regulations of the Philippines.
- b) The Philippine International Trading Corporation shall be the exclusive government entity responsible for undertaking all countertrade arrangements for and in behalf of the Philippine government, its agencies and instrumentalities.
- c) The Department of Trade and Industry (DTI), in consultation with the National Economic and Development Authority (NEDA) and the Bangko Sentral ng Pilipinas (BSP) shall be responsible for the formulation of the guidelines and rules and regulations that would effectively carry out the counter trade program and its variations between foreign suppliers and Philippine buyers, importers and exporters.

In view of the foregoing, early passage of this bill is earnestly requested.

S. Osmeña III
SERGIO OSMEÑA III
Senator

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AN ACT
ESTABLISHING A NATIONAL POLICY ON COUNTERTRADE

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

1 SECTION 1. *Title.* – This Act shall be known as the “**Countertrade**
2 **Act of 2004.**”

3 SEC. 2. *Declaration of Policy.* – It is the declared policy of the State to
4 encourage and develop countertrade with the end in view of increasing and
5 promoting both exports of traditional and non-traditional products; diversifying
6 and creating additional exports; finding new market outlets; establishing markets
7 in countries lacking in foreign exchange; improving the balance of trade position
8 with specific countries; strengthening and consolidating export markets that are
9 facing international competition; saving foreign exchange; developing a wide
10 range of sources of essential imports; and promoting technology transfer.

11 SEC. 3. *Definition.* For purposes of this Act, “countertrade” shall refer to
12 the various form of trade financing methods in which an international sale of
13 products, services and technology is conditional upon a sale in the opposite
14 direction involving payment primarily in goods or services in lieu of money.

15 SEC. 4. *Forms of Countertrade.* – For purposes of the preceding Section,
16 countertrade transactions may take the following forms or a combination thereof;

1 a) Barter – the direct exchange of goods without the use of money in
2 which the goods are of approximately equal value;

3 b) Offset – an arrangement wherein the buyer compels the seller to
4 manufacture certain components in the buyer's country or agrees to transfer the
5 latest production technology thereby reducing the demand for hard currency;

6 c) Counter purchase – an arrangement where the seller is granted normal
7 payment terms, with the buyer requiring the seller to utilize all or a percentage of
8 the payment to purchase products in the buyer's country within a specific period
9 of time;

10 d) Composition – an agreement wherein the seller of a product, service or
11 technology takes full or partial payment in the form of a product;

12 e) Buy-back - a long-term arrangement where the supplier of
13 technology, equipment or a plant agrees to accept as partial or full payment,
14 goods that are produced by the equipment, technology or plant supplied;

15 f) SWAP – a type of transaction involving bulk products, located in
16 alternative sites, which are traded with a nearer purchaser in order to save on
17 transportation costs. Differences in the quality of goods being substituted are
18 worked out in the swap contract;

19 g) Switch - an arrangement resorted to by a country involved in a
20 bilateral trade agreement which finds itself with a trade deficit. The deficit is
21 transferred to a third party which purchases goods from the deficit country and
22 sells them for hard currency. Often substantially discounted, the price of goods
23 transferred to the third party is used to clear the account;

24 h) Bilateral Clearing Accounts - a government-to-government trade
25 agreement to monitor trade flows between the contracting parties; and

26 i) Special Trade Agreements - these are variations of bilateral clearing
27 accounts to facilitate non-cash transactions with countries that do not have
28 sufficient hard currencies.

1 The above forms or combinations of countertrade transactions or their
2 variations may supplement but not supplant conventional trading arrangements
3 or trade under convertible currency payments.

4 SEC. 5. *Commercial Viability.* – All counter-trade arrangements shall
5 meet the criteria that relate to price, commercial viability, quality and level of
6 technology, social benefit and access to new markets in accordance with existing
7 import, export and foreign exchange procedures, and rules and regulations of the
8 Philippines.

9 SEC. 6. *Role of the Philippine International Trading Corporation.* – In
10 addition to its existing functions, the Philippine International Trading Corporation
11 (PITC) shall be the implementing arm of all countertrade programs or policies in
12 close coordination with the private sector and the concerned government
13 agencies. It shall also perform the following functions.

14 a) Undertake all countertrade arrangements for and in behalf of the
15 Philippine Government, its agencies, entities and other instrumentalities except in
16 cases where private individuals have been duly authorized by the Department of
17 Trade and Industry (DTI) to undertake the same as provided for in Section 8
18 hereof;

19 b) Formulate short and long-term marketing plans which would promote
20 Philippine exports using the various counter-trade schemes;

21 c) Act as an information collection and dissemination center on
22 countertrade regarding products to be exchanged including price, grades,
23 quantity, quality and other standards and the list of potential local and overseas
24 buyers and sellers involved in imports and export on policies and guidelines on
25 countertrade with the objective of persuading them to participate in countertrade
26 transactions;

27 d) Provide adequate training to all interested parties in planning,
28 negotiating and managing countertrade;

1 e) Submit to the Department of Trade and Industry (DTI) and the National
2 Economic and Development Authority (NEDA) monthly reports on all
3 countertrade transactions. It shall also coordinate with the Bangko Sentral and
4 the Bureau of Customs for the consolidation of reports on the volume of exports
5 and imports under countertrade arrangements;

6 f) Call upon any government, bureau, office, agency or instrumentality of
7 the Government, including government-owned and controlled corporations for
8 such information or assistance it may need in the exercise of its powers and
9 performance of its functions.

10 SEC. 7. *Countertrade Arrangements; General Rule; Exception; Private*
11 *Sector Participation.* – The Philippine International Trading Corporation (PITC)
12 shall be the exclusive government entity responsible for undertaking all
13 countertrade arrangements for and in behalf of the Philippine Government, and
14 its agencies, entities and instrumentalities: *Provided*, That where a private firm
15 has been authorized by the Department of Trade and Industry (DTI), it may
16 venture into the same for and in behalf of the Government: *Provided, finally*,
17 That all private companies, especially overseas trading companies which are
18 duly registered with the Securities and Exchange Commission (SEC), including
19 procedures/exporters and suppliers of Philippine products, may participate in
20 countertrade arrangements either in its own behalf or on behalf of another firm.

21 SEC. 8. *Allowable Export Commodities.* – Except for a buy-back type or
22 scheme of countertrade, only the following export commodities shall be eligible
23 for countertrade:

24 a) Manufactured or semi-manufactured non-traditional export
25 commodities;

26 b) Export commodities, traditional or non-traditional, declared by the
27 National Economic and Development Authority (NEDA) to be in excess supply
28 locally; and

1 c) Such other commodities declared by NEDA to be eligible for
2 countertrade from time to time.

3 SEC. 9. *Allowable Import Commodities.* – Commodities eligible for
4 importation under the countertrade arrangements shall consist of
5 essential/strategic imports which the Philippines need in substantial quantities
6 such as rice, wheat, oil, coal, animal feeds, fertilizers, machinery and equipment,
7 military hardware, aircraft, vehicle and such other commodities as may be
8 declared by the National Economic and Development Authority (NEDA).

9 Raw materials, supplies, machines, equipment, spare parts, services or
10 technology may also be subject to countertrade provided that they are not locally
11 available in sufficient quantities, or of comparable quality and at competitive
12 prices.

13 SEC. 10. *Public Work Contracts.* – Foreign contractors who have
14 successfully bidden local public works contract shall purchase Philippine
15 products at least fifty percent (50%) of the value of the said public works contract.
16 They shall use or resell these goods in their country, unless prior authorization
17 from the supplier is obtained to use or resell them elsewhere.

18 SEC. 11. *Payment Agreement.* – For purposes of this Act, all
19 countertrade arrangements provided for in Section 3 hereof, export and imports,
20 shall require specific Bangko Sentral approval.

21 SEC. 12. *Rules and Regulations.* – Within six (6) months from the date
22 of the effectivity of this Act, The Department of Trade and Industry (DTI), in
23 consultation with the National Economic and Development Authority (NEDA) and
24 the Bangko Sentral ng Pilipinas, shall promulgate the necessary rules and
25 regulations to implement this Act.

26 SEC. 13. *Repealing Clause.* – All laws, decrees, executive orders, rules
27 and regulations, or parts hereof inconsistent with the provision of this Act are
28 hereby repealed, amended or modified accordingly.

1 SEC. 14. *Separability Clause.* – If for any reason, any section or
2 provision of this Act is declared null and void, parts or provisions hereof which
3 are not affected by such declaration shall continue to be in full force and effect.

4 SEC. 15. *Effectivity.* – This Act shall take effect fifteen (15) days after its
5 publication in the Official Gazette or in at least two (2) newspapers of general
6 circulation whichever comes earlier.

Approved,