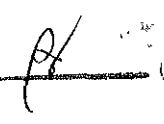


13<sup>th</sup> CONGRESS OF THE REPUBLIC )  
OF THE PHILIPPINES )  
First Regular Session )

104 JUL -6 AM 125

SENATE

RECEIVED BY: 

S. BILL NO. 1332

Introduced by Senator Ralph G. Recto

**EXPLANATORY NOTE**

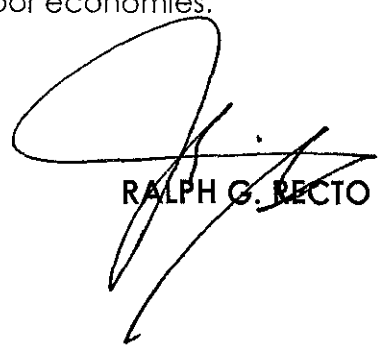
The increasing importance of the international economy for economic growth drives developing countries to actively pursue foreign direct investments. The grant of incentives ranked prominently among the strategies used to attract international capital and resource flows. Economies gain from investments in terms of foreign exchange earnings, job creation, technology transfer and industry linkages.

A study of developing countries concludes that incentives continue to be essential for industries, albeit more so for those catering to the export market. One such incentive is the tax and duty free importation of capital equipment. Historically, Executive Order No. 226, otherwise known as, "The Omnibus Investments Code of 1987", provided for the incentive for a period of five (5) years from the effectivity of the Code. Thereafter, Republic Act Nos. 7369 and 7918, were consecutively passed to grant the same incentive to new and expanding BOI-registered enterprises. However, enjoyment of the said incentive expired on 31 December 1999 except for enterprises located within the ecozones.

The importation of capital equipment is one of the major cost burdens of business enterprises in their start-up operations. The progressive lowering down of tariffs has not entirely eased the dilemma with the rate of most capital equipment fixed at the maximum of 5%. Big-ticket projects, which are mostly capital-intensive, therefore, strongly clamor for the provision of the incentive. Further, income-based incentives are not substitutes for capital equipment incentive as the former only serve their purposes once the enterprise has gained profits from its operation. As a result, it impedes the expansion of the enterprise and acquisition of state-of-the-art technology thereby downgrading their competitiveness in the regional market.

The Philippines competes for capital in a region that has long been typified by extensive recourse to fiscal incentives. The tax and duty free importation is universally available in the ASEAN countries, with the exception of only Singapore and the Philippines, for certain promoted industries. It is in this light that this bill proposes to amend certain provisions of the Omnibus Investments Code of 1987, in particular to restore the capital equipment incentives to export- and domestic-oriented enterprises, to further equip the Philippines with a competitive edge vis-à-vis our neighbor economies.

Passage of this bill is earnestly sought.

  
RALPH G. RECTO



1 December 31, 1997 whichever comes first: *Provided,*  
2 *however,* That those enterprises located outside the National  
3 Capital Region (NCR) and registered on or before December  
4 31, 1994 may avail of the incentives herein provided until  
5 December 31, 1999: *Provided, further,* That the enterprise  
6 which shall register after December 31, 1994 shall be subject  
7 to the provisions of Republic Act. No. 7716, and three percent  
8 (3%) customs duties up to December 31, 1997; *Provided,*  
9 *finally,* That the importation of machinery, equipment and  
10 accompanying spare parts shall comply with the following  
11 conditions:

12           “(1) They are not manufactured domestically in  
13 sufficient quantity, or comparable quality, and at reasonable  
14 prices;

15           “(2) They are reasonably needed and will be used  
16 exclusively by the registered activity, unless prior approval of  
17 the Board is secured for the part-time utilization of said  
18 equipment in a non-registered activity to maximize usage  
19 thereof or the proportionate taxes and duties are paid on  
20 specific equipment and machinery being permanently used  
21 for non-registered activities; and

22           “(3) The approval of the Board was obtained by the  
23 registered enterprise for the importation of such machinery,  
24 equipment and accompanying spare parts.]

25           [In granting the approval of the importations under this  
26 paragraph, the Board may require international canvassing  
27 but if the total cost of the capital equipment or industrial plant

1 exceeds US\$5,000,000, the Board shall apply or adopt the  
2 provisions of Presidential Decree No. 1764 on international  
3 competitive bidding.】

4 【If the registered enterprise sells, transfers or disposes of  
5 these machinery, equipment and spare parts without prior  
6 approval of the Board within five (5) years from date of  
7 acquisition, the registered enterprise and vendee, transferee  
8 or assignee shall be solidarily liable to pay twice the amount  
9 of the tax exemptions given it. The Board shall allow and  
10 approve the sale, transfer or disposition of the said items until  
11 December 31, 1997 or December 31, 1999, as the case may  
12 be if made:

13 “(aa) To another registered enterprise or registered  
14 domestic producer enjoying similar activities;

15 “(bb) For reasons of proven technical obsolescence; or

16 “(cc) For purpose of replacement to improve and/or  
17 expand the operations of the registered enterprise.】

18 IMPORTATION OF CAPITAL EQUIPMENT, SPARE PARTS,  
19 PRODUCTION CONSUMABLES, OR THOSE REQUIRED FOR  
20 POLLUTION ABATEMENT AND CONTROL INCLUDING  
21 CONSIGNMENT THEREOF, BY REGISTERED EXPORT-ORIENTED  
22 ENTERPRISES UPON THE EFFECTIVITY OF THIS LAW, SHALL BE  
23 EXEMPTED TO THE EXTENT OF ONE HUNDRED PERCENT (100%)  
24 OF THE TAXES AND CUSTOM DUTIES: *PROVIDED*, THAT THE  
25 IMPORTATION THEREOF SHALL BE USED EXCLUSIVELY BY THE  
26 REGISTERED ENTERPRISE IN ITS REGISTERED ACTIVITY:  
27 *PROVIDED, FURTHER*, THAT IMPORTATION OF SOURCE

1 DOCUMENTS BY ENTERPRISES ENGAGED IN INFORMATION  
2 TECHNOLOGY SHALL LIKEWISE BE FULLY EXEMPT FOR THE  
3 PERIOD STATED HEREIN.

4 THE AFOREMENTIONED IMPORTATION OF REGISTERED  
5 DOMESTIC-ORIENTED ENTERPRISES SHALL BE SUBJECTED TO  
6 ONE PERCENT (1%) CUSTOM DUTIES AND THE PREVAILING  
7 VALUE-ADDED TAX-RATE.

8 BOARD APPROVAL MUST BE SECURED BEFORE ANY SALE,  
9 TRANSFER OR DISPOSITION OF THE SAID ITEMS IS MADE:  
10 *PROVIDED*, THAT IF SUCH SALE, TRANSFER OR DISPOSITION IS  
11 MADE WITHIN THE FIRST FIVE (5) YEARS FROM DATE OF  
12 IMPORTATION, ANY OF THE FOLLOWING CONDITIONS MUST BE  
13 PRESENT:

14 (1) IF MADE TO ANOTHER ENTERPRISE ENJOYING TAX  
15 AND DUTY EXEMPTION ON IMPORTED CAPITAL EQUIPMENT;

16 (2) IF MADE TO ANOTHER ENTERPRISE, UPON  
17 PAYMENT OF ANY TAXES AND DUTIES DUE ON THE NET BOOK  
18 VALUE OF THE EQUIPMENT TO BE SOLD;

19 (3) EXPORTATION OF THE EQUIPMENT, MACHINERY,  
20 SPARE PARTS OR SOURCE DOCUMENTS OR THOSE REQUIRED  
21 FOR POLLUTION ABATEMENT AND CONTROL; OR

22 (4) FOR REASONS OF PROVEN TECHNICAL  
23 OBSOLESCENCE.

24 WHEN THE AFOREMENTIONED SALE, TRANSFER OR  
25 DISPOSITION IS MADE UNDER ANY OF THE CONDITIONS  
26 PROVIDED FOR IN THE FOREGOING PARAGRAPHS OTHER  
27 THAN PARAGRAPH (2), THE REGISTERED FIRM SHALL NOT PAY

1 THE TAXES AND DUTIES WAIVED ON SUCH ITEMS: *PROVIDED,*  
2 *FURTHER,* THAT IF THE REGISTERED ENTERPRISE SELLS, TRANSFERS  
3 OR DISPOSES THE AFOREMENTIONED IMPORTED ITEMS  
4 WITHOUT PRIOR BOARD APPROVAL WITHIN FIVE (5) YEARS  
5 FROM DATE OF IMPORTATION, THE REGISTERED ENTERPRISE  
6 AND THE VENDEE, TRANSFEREE, OR ASSIGNEE SHALL BE  
7 SOLIDARILY LIABLE TO PAY TWICE THE AMOUNT OF THE TAX  
8 EXEMPTION GIVEN IT: *PROVIDED, FINALLY,* THAT EVEN IF THE  
9 BOARD APPROVED THE SALE, TRANSFER OR DISPOSITION OF  
10 THE EQUIPMENT AFTER FIVE (5) YEARS FROM DATE OF  
11 IMPORTATION, THE REGISTERED ENTERPRISE IS STILL LIABLE TO  
12 PAY THE TAXES AND DUTIES OF THE NET BOOK VALUE OF THE  
13 EQUIPMENT, MACHINERY OR SPARE PARTS IF IT HAS VIOLATED  
14 ANY OF ITS REGISTRATION TERMS AND CONDITIONS,  
15 OTHERWISE, IT SHALL NO LONGER BE SUBJECT TO THE PAYMENT  
16 OF THE TAXES AND DUTIES WAIVED THEREON.

17 *[(d) Tax Credit on Domestic Capital Equipment. - A*  
18 *tax credit equivalent to one hundred percent (100%) of the*  
19 *value of the national internal revenue taxes and customs*  
20 *duties that would have been waived on the machinery,*  
21 *equipment and spare parts, had these items been imported*  
22 *shall be given to the new and expanding enterprise*  
23 *registered with the Board of Investments as of December 31,*  
24 *1994 which purchases machinery, equipment and spare parts*  
25 *from a domestic manufacturer: Provided, (1) That the said*  
26 *equipment, machinery and spare parts are reasonably*  
27 *needed and will be used exclusively by the registered*

1 enterprise in its registered activity, unless prior approval of the  
2 Board is secured for the part-time utilization of said equipment  
3 in a non-registered activity to maximize usage thereof; (2)  
4 That the equipment would have qualified for tax and duty  
5 exemption under paragraph ( c ) hereof; ( 3 ) That the  
6 approval of the Board was obtained by the registered  
7 enterprises; and ( 4 ) That the purchase is made on or before  
8 December 31, 1997 or December 31, 1999 as the case may  
9 be. If the registered enterprise sells, transfers, or disposes of  
10 these machinery, equipment and spare parts, the provision in  
11 the preceding paragraph for such disposition shall apply.】

12 x x x

13 **SEC. 2.** Unless otherwise provided in this Act, the tax and duty  
14 exemptions and other privileges herein set forth shall be availed within a  
15 period of five (5) years from the date of effectivity of this Act.

16 **SEC. 3.** All other provisions of Executive Order No. 226 and Republic  
17 Act No. 7918, otherwise known as "An Act Amending Article 39, Title III of  
18 Executive Order No. 226, also known as the Omnibus Investments Code of  
19 1987, as amended, and for Other Purposes", not affected by the  
20 provisions of this Act shall remain in full force and effect.

21 **SEC. 4.** *Repealing Clause.* All laws, decrees, orders, rules and  
22 regulations or parts thereof inconsistent with this Act, are hereby repealed  
23 or modified accordingly.

24 **SEC. 5.** *Effectivity.* This Act shall take effect fifteen (15) days following  
25 its publication in the *Official Gazette* or in at least two (2) newspapers of  
26 general circulation.

27 Approved,