SECRETARY

13th CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 JUL -6 A10:25

RECEIVED BY: [signature]

SENATE

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

RGA/sb2711-capequipt.doc

13th CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 JUL -6 A10:25

SENATE

RECEIVED BY:

S. BILL NO. 1332

Introduced by Senator Ralph G. Recto

AN ACT
GRANTING TAX INCENTIVES ON CAPITAL EQUIPMENT, AMENDING FOR THE PURPOSE EXECUTIVE ORDER NO. 226, AS AMENDED, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987.

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

SECTION 1. Paragraphs (c) and (d), Article 39, Title III of Executive Order No. 226, as amended, is hereby further amended to read as follows:

"Art. 39. *Incentives to Registered Enterprises.* – All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment:

"(a) xxx xxx xxx

"(b) xxx xxx xxx

"(c) *Tax and Duty Exemption on Imported Capital Equipment and its Accompanying Spare Parts BY REGISTERED EXPORT-ORIENTED.* – [New expanding/modernizing enterprises which have been registered with the Board of Investments on or before December 31, 1994 shall be exempt to the extent of one hundred percent (100%) of national internal revenue taxes and customs duties on importations of machinery, equipment and accompanying spare parts within the prescribed period under its law of registration or until

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

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

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

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

[In granting the approval of the importations under this paragraph, the Board may require international canvassing but if the total cost of the capital equipment or industrial plant exceeds US$5,000,000, the Board shall apply or adopt the provisions of Presidential Decree No. 1764 on international competitive bidding.]

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

"(aa) To another registered enterprise or registered domestic producer enjoying similar activities;

"(bb) For reasons of proven technical obsolescence; or

"(cc) For purpose of replacement to improve and/or expand the operations of the registered enterprise.]

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

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

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

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

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

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

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

(4) FOR REASONS OF PROVEN TECHNICAL OBSOLESCENCE.

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

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

[(d) *Tax Credit on Domestic Capital Equipment*. - A tax credit equivalent to one hundred percent (100%) of the value of the national internal revenue taxes and customs duties that would have been waived on the machinery, equipment and spare parts, had these items been imported shall be given to the new and expanding enterprise registered with the Board of Investments as of December 31, 1994 which purchases machinery, equipment and spare parts from a domestic manufacturer: *Provided*, (1) That the said equipment, machinery and spare pares are reasonably needed and will be used exclusively by the registered enterprise in its registered activity, unless prior approval of the Board is secured for the part-time utilization of said equipment in a non-registered activity to maximize usage thereof; (2) That the equipment would have qualified for tax and duty exemption under paragraph (c) hereof; (3) That the approval of the Board was obtained by the registered enterprises; and (4) That the purchase is made on or before December 31, 1997 or December 31, 1999 as the case may be. If the registered enterprise sells, transfers, or disposes of these machinery, equipment and spare parts, the provision in the preceding paragraph for such disposition shall apply.]

x x x

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

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

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

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

Approved,