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Third Regular Session }

68
CERTIFIED BY THE PRESIDENT
FOR ITS IMMEDIATE ENACTMENT
ON AUGUST 24, 1994

AS PASSED ON SECOND
READING ON NOV. 15 1994

SENATE

S. No. 1863

(IN CONSOLIDATION OF S. NOS. 849, 1517, 1555 AND H. NO. 12073)

INTRODUCED BY SENATORS MACAPAGAL, ALVAREZ, HERRERA, TATAD,
ROMULO AND THE MEMBERS OF THE COMMITTEES ON ECONOMIC
AFFAIRS, TRADE AND COMMERCE AND WAYS AND MEANS

AN ACT TO DEVELOP EXPORTS AS A KEY TOWARDS THE
ACHIEVEMENT OF THE NATIONAL GOALS TOWARDS
THE YEAR 2000

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

ARTICLE I

1 DECLARATION OF PRINCIPLES AND POLICIES

2 SECTION 1. This Act shall also be known as the "Export
3 Development Act of 1994".

4 SEC. 2. *Declaration of Policy.* - It shall be the policy of the State
5 to evolve export development into a national effort. The Government shall
6 support exports as a key strategy for a sustainable agri-industrial devel-
7 opment to achieve Philippines NIC status towards the year 2000. The
8 private sector shall play a major role in export promotions, diversification
9 of export markets and development of new world-class products.

1 The Government and the private sector shall jointly transform the
 2 Philippines into an exporting nation. The State shall develop macro-
 3 economic policies that support export development in order that the
 4 national goals of increased productivity, employment and income can be
 5 expeditiously achieved.

6 Small and medium scale enterprises (SMEs) which comprise the
 7 greater part of the country's business entities, shall play a dominant role
 8 in the country's export thrusts. Along this line, export programs and
 9 strategies shall be geared towards transforming all industries including
 10 domestic-oriented enterprises and SMEs into world class exporters.

11 SEC. 3. *Basic Principles.* - The following are the basic national
 12 principles that shall govern exports:

13 a) Monetary and foreign exchange policies shall establish and
 14 maintain a competitive exchange rate, supported by measures to provide
 15 safety nets for various sectors that may be adversely affected by the
 16 implementation of such policies. Such policies shall be consistent with the
 17 objectives of the *Bangko Sentral ng Pilipinas* pursuant to Section 3 of
 18 Republic Act No. 7653;

19 b) Fiscal and credit policies shall provide adequate funds at liberal
 20 terms for public and private investments and export business operations
 21 as well as for the financing needs of SMEs especially those in the
 22 countryside, while keeping, as much as practicable, the cost of credit
 23 comparable to international levels;

24 c) Agricultural policies shall build up viability and competitiveness
 25 of the country's agriculture sectors and facilitate their linkage with

1 industry to strengthen the agri-industrial base of the country's export
2 sector;

3 d) Trade, tariff and customs policies and regulations shall be
4 directed towards competitiveness of domestic manufacturing industries
5 as main and cheaper sources of raw materials for the export sector;

6 e) Technical support policies to improve the quality of export
7 products shall be adopted, particularly those relating to technology
8 transfers, R & D, technical training and related activities. As such, the
9 Department of Science and Technology and the Department of Agricul-
10 ture shall be supported by state colleges and universities in the diffusion
11 of technology, information and training to the countryside for agri-
12 industrial and export development;

13 f) Infrastructure policies must be urgently directed towards the
14 improvement of facilities critically needed for the development of the
15 export sector, particularly those relating to the continuous and adequate
16 supply of power, water, transportation, roads and bridges, ports and
17 telecommunications in order to support the flow of goods and services in
18 the context of the national export drive;

19 g) The link between export growth and countryside development
20 must be strengthened through policies favorable to SMEs regional
21 industrial-centers, and export processing zones to boost rural and farm-
22 based entrepreneurship in identified geographic economic growth areas
23 of the country;

24 h) Labor and industrial relations policies must recognize the need
25 to promote harmonious and industrial peace between labor and manage-

1 ment in order to achieve international competitiveness and encourage
2 investments in the export sector. Focus shall be given to the formulation
3 of accords between labor and management which shall provide for
4 sustained increase in productivity and competitiveness while maintaining
5 industrial peace. Likewise, reasonable price and income policies shall be
6 adopted to safeguard the interests of the labor sector; and

7 i) All government agencies whose actions affect exporters, such as
8 the Department of Trade and Industry, Board of Investments, Bureau of
9 Customs, and the Bureau of Internal Revenue shall simplify procedures
10 to minimize bureaucratic red tape.

11 **SEC. 4. Definition of Terms.** - For purposes of this Act, the
12 following definitions shall apply to the following terms:

13 a) *Exporter* means any person, natural or juridical, licensed to do
14 business in the Philippines, engaged in the production, manufacture or
15 trade of products or services which earns at least fifty percent (50%) of its
16 normal operating revenues either from the sale of its products or services
17 abroad for foreign currency, or from the sale of products whose export
18 pricing is based on quotations in an international commodity exchange or
19 market, and which will result in the increase of the international reserve
20 for the country: *Provided*, That in the case of services, the same shall
21 include financial, legal, engineering, technical, construction and other
22 related professional services supplied by Philippine firms contracted to
23 provide such services for institutions/entities abroad on a project basis.
24 Services rendered by overseas contract workers are not covered by this
25 definition.

1 b) *Indirect exporter* means any person, natural or juridical, engaged
2 in the production or manufacture of products or provision of services (as
3 the term is defined in the next preceding paragraph) which earns at least
4 fifty percent (50%) of its normal operating revenues from the sale of its
5 products or services to an exporter or exporters, as defined above, as raw
6 materials for or component parts of, or otherwise inputs to, a product
7 which is finally exported.

8 c) *Small and Medium Scale Enterprises (SMEs)* - The definition
9 of which shall be formulated by the Small and Medium Enterprise
10 Development Council in consultation with the Export Development
11 Council.

12 d) *Export Promotion* shall refer to a range/network of services and
13 activities which enhance, boost or develop exports such as trade/market
14 information; organization of trade fairs and missions; provision of
15 product design and technical advisory services; conduct of training
16 seminars, workshops and conferences on export-related subjects; publi-
17 cation of export related news and information; improvement of quality
18 standards and related activities aimed at promoting or strengthening
19 exports and improving the position of Philippine exports in specific
20 foreign markets pursuant to the Philippine Export Development Plan.

21 e) *Export Development* shall refer to those activities aimed at the
22 generation of new export trade (i.e., old products to new markets, new
23 products to old markets) over the medium to long term including those
24 activities such as market research and product development.

1 f) *Export Sale* means the sale and shipment or exportation of goods
2 from the Philippines to a foreign country irrespective of any shipping
3 arrangement that may be agreed upon which may influence and determine
4 the transfer of ownership of the goods so exported. It shall be reckoned
5 at Philippine Port, F. O. B. value, as determined in invoices, bill of lading,
6 inward letters of credit, landing certificates and other commercial docu-
7 ments of exports directly sold abroad by an exporter: *Provided*, That
8 exports under counter trade arrangements shall be considered as export
9 sales for purposes of this Act.

10 g) *Export Support Services* shall refer to activities that are vital and
11 indispensable part of the conduct of exports such as, but not limited to,
12 insurance, brokerage, warehousing, port services, financing, transporta-
13 tion, communication and related services.

14 h) *Export Incentives* shall refer to support measures provided by the
15 Government to exporters to encourage investment in the export sector,
16 create a freer trade environment and motivate exporters to increase export
17 sales and perform competitively in the international market.

18 i) *Accredited Organization* shall refer to the organization of
19 exporters granted accreditation by the Export Development Council, as
20 provided for in Section 7 (1) of this Act.

21 ARTICLE II

22 INSTITUTIONAL STRUCTURES AND STRATEGIES

23 SEC. 5. *Philippine Export Development Plan (PEDP)*. - The
24 President of the Republic of the Philippines shall approve a rolling three-
25 year Philippine Export Development Plan prepared by the Department of

1 Trade and Industry which shall form part of the Medium Term Philippine
2 Development Plan. It shall be formulated in consultation with the private
3 sector, validated and updated semestrally.

4 The PEDP shall define the country's annual and medium term
5 thrusts, strategies, programs and projects and shall be jointly imple-
6 mented by the Government, exporters and other concerned sectors.

7 SEC. 6. *Export Development Council.* - The existing Export
8 Development Council, hereinafter referred to as the Council, which was
9 created by Executive Order No. 98 (1993) as modified by Executive
10 Order No. 110 (1993) and Executive Order No. 180 (1994), shall be
11 strengthened and institutionalized for the purpose of overseeing the
12 implementation of the PEDP and coordinating the formulation and
13 implementation of policy reforms to support the said Plan. It shall be an
14 independent body that shall report directly to the President of the Republic
15 of the Philippines, and shall be vested with executing and implementing
16 authority over the coordination of government efforts to promote exports.

17 SEC. 7. *Powers and Functions of the Council.* - The Council shall:

18 a) formulate and endorse the approval of the PEDP, coordinate,
19 monitor and assess the implementation thereof and, when necessary,
20 institute adjustments thereon in the light of changing conditions in both
21 the domestic and international environment;

22 b) periodically review and assess the country's export
23 performance, problems and prospects;

24 c) identify the main bottlenecks, problem areas and constraints in
25 all areas/sectors/activities which affect the export sector, such as, but not

1 limited to, physical infrastructure, finance, technology, production,
2 promotions and marketing;

3 d) mandate specific departments and agencies to attend to these
4 problems and constraints in the development of exports in any of the areas
5 mentioned in paragraph (c) hereof, and require the concerned secretaries
6 to deliver a progress report(s) on the actions/initiatives taken to resolve
7 these areas of concern at the next meeting(s);

8 e) ensure export quality control by overseeing the formulation and
9 implementation of quality control guidelines by appropriate agencies to
10 make Philippine exports at par with world-class products;

11 f) impose sanctions on any government agency or officer or
12 employee thereof that violates the provisions of this Act or rules and
13 regulations issued pursuant thereto in accordance with due process of
14 law;

15 g) recommend to Congress any proposed legislation that would
16 contribute to the development of exports;

17 h) formulate policies or recommend measures and draw up a study
18 within six (6) months from the approval of this Act relative to the
19 rationalization of the Government's export promotion and development
20 function/activities and programs for the eventual transfer of government
21 export promotion and development activities to the private sector within
22 a period of three (3) years after the approval of this Act;

23 i) formulate the policies for the granting of incentives to exporters,
24 direct and indirect;

25 j) formulate policies, rules and regulations, procedures and admin-

1 istrative systems for the efficient and effective exercise of its powers and
2 functions, including the creation or adoption of an executive committee
3 or secretariat;

4 k) grant and review the accreditation of the organization of
5 exporters, according to the guidelines which it shall later promulgate for
6 the purpose: *Provided*, That the organization accredited shall be the
7 dominant one among the other existing export organizations as deter-
8 mined under the guidelines promulgated by the Council;

9 l) within ninety (90) days from the approval of this Act, submit to
10 Congress a study on the legal and financial feasibility of setting up/
11 strengthening a unified export financing institution for exporters;

12 m) prepare and recommend a budget to the National Government
13 to fund the activities of the Council for export promotion and develop-
14 ment, for inclusion on a yearly basis, in the General Appropriations Act,
15 with the power and authority to disburse the same for the promotion and
16 development of exports in accordance with the guidelines to be set by the
17 Council; and

18 n) to negotiate and enter into any and all kinds of agreements and
19 contracts for the purposes mandated in this Act.

20 SEC. 8. *Composition of the Council.* - The Council shall be
21 composed of the following:

- 22 a) The President - Honorary Chairman;
23 b) Secretary of Trade and Industry - Chairman;
24 c) Secretary of Foreign Affairs - Vice Chairman
25 d) Governor of the *Bangko Sentral ng Pilipinas* - Member;

- 1 e) Secretary of Finance - Member;
- 2 f) Secretary of Agriculture - Member;
- 3 g) Secretary of Labor and Employment - Member;
- 4 h) Secretary of Science and Technology - Member;
- 5 i) Director-General of the National Economic and Development
- 6 Authority - Member;
- 7 j) Secretary of the Philippine Information Agency - Member;
- 8 k) Twelve (12) representatives from the private sector, comprising
- 9 the following: the Chairman and the President of the dominant export
- 10 organizations or its successor-in-interest, the President of the biggest
- 11 national business chamber, and the President of the small and medium
- 12 exporters, and eight (8) other representatives which shall be nominated
- 13 by the accredited export organization in accordance with Section 9 hereof.

14 The Private Sector Representatives who are not *ex officio* members
15 shall be appointed by the President from a list of nominees submitted by
16 the accredited organizations.

17 The private sector representatives shall be exempted from divesting
18 their interests in any private company or corporation or in such other
19 business as they are engaged in as precondition to their appointment as
20 members of the Council.

21 SEC. 9. *Mode of Selection and Tenure of the Private Sector*
22 *Representatives.* - The President shall appoint the private sector represen-
23 tatives who are not *ex officio* members, upon nomination of the accredited
24 organizations, ensuring balanced representation from the Visayas and
25 Mindanao and other sectors, such as the labor sector, agricultural and

1 traditional export sectors as against the non-agricultural and non-tradi-
2 tional export sectors and the like.

3 The private sector representatives of the Council shall serve for a
4 period of two (2) years. When a vacancy arises due to resignation, death
5 or incapacity of a member, a replacement who shall serve for the
6 remainder of the member's term of office shall be appointed by the
7 President, upon recommendation of the accredited organization.

8 SEC. 10. *Meetings of the Council.* - The Council shall meet once
9 a month: *Provided*, That the President or the Chairman may convene the
10 Council anytime whenever they deem it necessary.

11 SEC. 11. *Accredited Export Organization.* - The Council shall
12 accredit a single umbrella organization of exporters pursuant to Section
13 7 (1) of this Act to represent the export sector concerns and interests for
14 three (3) years, after which the Council shall undertake a review
15 of the accreditation prior to the granting or regranting of the said
16 accreditation.

17 The accredited organization shall:

18 a) recommend private sector representatives to the Council for
19 appointment by the President, with consideration of balanced sectoral
20 representation, as provided for in Section 9 hereof;

21 b) represent the interests of the export sector;

22 c) be responsible for coordinating, supporting and assisting the
23 Department of Trade and Industry relative to the formulation and
24 implementation of the government's export promotion programs and
25 policies: *Provided*, That in the event that some of the export promotion

1 functions of the Government are privatized in accordance with this Act,
2 it shall be responsible for the performance of such privatized export
3 promotion function(s); and

4 d) be authorized to accept the land for the establishment of the
5 Philippine Trade Center or Centers to be set up in accordance with Section
6 15 hereof, which shall include the authority to enter into any kind of
7 agreements or contracts with persons, organizations, firms or entities
8 pursuant thereto.

9 SEC. 12. *Specific Mandate to the National Economic and*
10 *Development Authority (NEDA) and the Department of the Interior and*
11 *Local Government (DILG).* - The NEDA shall issue standards and policies
12 to be observed by local government units (LGU's) in order to:

13 a) ensure that LGU's plans and budgets are supportive of agri-
14 industrial growth and export competitiveness thrusts of the National
15 Government; and

16 b) ensure optimal allocation of expenditures.

17 The DILG and the regional development councils shall be the
18 channels through which these standards and policies shall be coursed.

19 SEC. 13. *Export Financing.* - Pursuant to Section 7(I) of this Act,
20 the Council shall make the necessary legal and feasibility study/recom-
21 mendation on the alignment and rationalization of government programs
22 relative to export financing and existing organizations dealing primarily
23 or exclusively with export financing, likewise considering the creation of
24 a private sector-led export financing institution, whose services shall be
25 primarily devoted towards supporting the operations of exporters and

1 indirect exporters particularly the SMEs. The study shall include the
2 powers, functions and operations of the proposed institution and if and
3 when necessary, the preparation of a bill creating the same which the
4 Council will recommend to Congress within six (6) months after the
5 effectivity of this Act.

6 **SEC. 14. *Export Promotion and Information.*** - As provided for in
7 Section 7 (h) of this Act, the Council through the Department of Trade and
8 Industry shall, within six (6) months from the approval of this Act, prepare
9 an Export Promotion Privatization Program which will rationalize or re-
10 align the government's export promotion and information programs and
11 services which the private sector can undertake and the privatization
12 process shall be completed within a period of three (3) years.

13 **SEC. 15. *Philippine Trade Center.*** - The Government shall hereby
14 assist the private sector in the establishment of a world-class Philippine
15 Trade Center or Centers which shall house the trade promotion offices of
16 the two sectors and shall serve as the permanent exhibit site of the
17 country's export products. In this regard, the Government, through a
18 wholly owned-government corporation or subsidiary, shall provide the
19 land for the Center(s), through a land grant or long-term lease to the
20 accredited organization, and assist in arranging financing for the con-
21 struction of the trade complex or complexes.

22 The accredited organization shall have the authority to manage the
23 Center(s) or enter into partnership, joint ventures or any kind of contract
24 with other organizations, corporations, firms or entities for the operation
25 of the Center(s), its facilities or functions.

ARTICLE III

OTHER INCENTIVES

SEC. 16. *Incentives to Exporters.* - The following incentives shall be granted to exporters:

a) Government agencies including the Department of Trade and Industry, Department of Labor and Employment, Department of Science and Technology, and the Department of Agriculture, shall formulate and implement specific projects and programs which will provide training and assistance to exporters in research and product development, packaging, marketing and promotion. A report of the programs and projects shall be made to the Export Development Council by the concerned government agencies at the end of November of each year.

b) Government financial institutions including the Development Bank of the Philippines, the Philippine National Bank and the Land Bank shall develop and implement special credit facilities which shall offer preferential and simplified credit schemes to exporters.

c) The following tax privileges shall also be granted to exporters:

1) Net operating loss carry-over for a period of three (3) years;
2) Accelerated depreciation in accordance with rules and regulations prescribed by the Secretary of Finance for plant machinery and equipment that are actually used for the production of exports;

3) Exemption from Presidential Decree No. 1853 requiring advanced payment of duties and taxes for importation prior to the opening of letters of credit for importations that are used 100% for export production;

1 ment and from private sector contribution.

2 SEC. 19. *Operation of the Council.* - The Council shall immedi-
3 ately discharge its functions one (1) month after the approval of this Act.

4 ARTICLE V

5 CRIMINAL OFFENSES AND PENALTIES

6 SEC. 20. *Misuse of Funds.* - Any person or entity, private or
7 government, who shall unlawfully and maliciously divert the funds under
8 this Act for purposes other than intended shall, in addition to the penalties
9 under existing laws, be punished with imprisonment ranging from three
10 (3) years to six (6) years and a fine equivalent to the fund diverted or
11 misused.

12 SEC. 21. *Violations of this Act.* - Likewise, any person or entity,
13 private or government, who is found guilty of willful or negligent violation
14 of the provisions of this Act shall be subject to penalty ranging from six
15 (6) months to one (1) year imprisonment and a fine not exceeding Fifty
16 thousand pesos (P50,000).

17 ARTICLE VI

18 ADMINISTRATIVE PROCEDURES AND SPECIAL

19 CLAUSES

20 SEC. 22. *Implementing Rules and Regulations.* - The Council shall
21 formulate the rules and regulations to implement the provisions of this Act
22 within one hundred twenty (120) days from its approval. Such rules and
23 regulations shall take effect fifteen (15) days from their publication in a
24 newspaper of general circulation in the Philippines.

25 SEC. 23. *Separability Clause.* - The provision of this Act are hereby

1 declared separable and in the event any of the provisions hereof are
2 declared unconstitutional, the other provisions which are not affected
3 thereby shall remain in full force and effect.

4 SEC. 24. *Repealing Clause.* - All other laws and decrees, executive
5 orders, administrative orders, rules and regulations or parts thereof which
6 are inconsistent with the provisions of this Act are hereby repealed,
7 amended and modified accordingly.

8 SEC. 25. *Effectivity Clause.* - This Act shall take effect immedi-
9 ately upon approval hereof.

Approved,

Senate Archives (LRAS)

