

BUSINESS INCENTIVES AND REFORMS

PRESIDENTIAL DECREE NO. 92, January 06, 1973

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WHEREAS, There is a need to improve the overall climate for business and industry in the Philippines in order to accelerate economic growth and promote the well-being

especially of the masses of our people;

WHEREAS, although the various incentives already provided in existing laws to encourage investment, both local and foreign, in desirable industries and projects have actually induced their establishment in preferred areas, there is still a need to re-examine their precise impact and relevance not only to increased productivity but to the improvement of the living standards of the people;

WHEREAS, in order to achieve the foregoing objectives, it is necessary to update and rationalize existing incentives and provide new ones that can help optimize the rate of economic development by giving priority to export-oriented industries especially those utilizing indigenous raw materials and which can generate more employment and income opportunities in keeping with the escalating demands of our people for the basic essentials that make for decent existence;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution as Commander-in-Chief of the Armed Forces of the Philippines and pursuant to Proclamation No. 1081, dated September 21, 1972, and General Order No. 1, dated September 22, 1972, as amended and in order to effect the desired changes and reforms in the social, economic and political structure of our society, do hereby order and decree amendments to Republic Act Numbered Fifty-one hundred eighty-six, otherwise known as the Investment Incentives Act, and complementary laws such as Republic Act Numbered Sixty-one hundred thirty-five, otherwise known as the Export Incentives Act and Republic Act Numbered Fifty-Four hundred fifty-five, as follows:

SECTION 1. Section seven of Republic Act Numbered Fifty-one hundred eighty-six is hereby amended by adding a new subsection and amending paragraphs (d), (e) and (h) hereof, to read as follows:

"SEC. 7. Incentives to a Registered Enterprise. — A registered enterprise, to the extent engaged in a preferred area of investment, shall be granted the following incentive benefits:

* * * * *

"(d) Tax Exemption on Imported Capital Equipment. Within seven years from the date of registration of the enterprise, importation of machinery and equipment, and spare parts shipped with such machinery and equipment, shall not be subject to tariff duties and compensating tax: Provided, That said machinery, equipment, and spare parts: (1) are not manufactured domestically in reasonable quantity and quality at reasonable prices; (2) are directly and actually needed and will be used exclusively by the registered enterprise in the manufacture of its products, unless prior approval of the Board is secured for the part-time utilization of said equipment in non-registered operations to maximize usage thereof; (3) are covered by shipping documents

in the name of the registered enterprise to whom the shipment will be delivered direct to customs authorities; (4) the prior approval of the Board was obtained by the registered enterprise before the importation of such machinery, equipment and spare parts; and (5) the registered enterprise chooses not to avail of the privileges granted by Republic Act Numbered Thirty-one hundred twenty-seven, as amended. If the registered enterprise sells, transfers or disposes of these machinery, equipment and spare parts without the prior approval of the Board within five (5) years from the date of acquisition, the registered enterprise shall pay twice the amount of the tax exemption given it. However, the Board shall allow and approve the sale, transfer, of the disposition of the said items within the said period of five (5) years if made: (1) to another registered enterprise; (2) for reasons of proven technical obsolescence; (3) for purpose of replacement to improve and/or expand the operations of the enterprise.

"(e) Tax Credit on Domestic Capital Equipment. — A tax credit equivalent to one hundred per cent (100%) of the value of the compensation tax and customs duties that would have been paid on the machinery, equipment and spare parts had these items been imported shall be given to the registered enterprise who purchases machinery, equipment and spare parts from a domestic manufacturer, and another tax credit equivalent to fifty per cent (50%) thereof shall be given to the said manufacturer: Provided, (1) That the said machinery, equipment and spare parts are directly and actually needed and will be used exclusively by the registered enterprise in the manufacture of its products, unless prior approval of the Board is secured for the part-time utilization of said equipment in non-registered operations to maximize usage thereof; (2) that the prior approval of the Board was obtained by the local manufacturer concerned; and (3) that the sale is made within seven years from the date of registration of the registered enterprise. If the registered enterprise sells, transfers or disposes of these machinery, equipment and spare parts without the prior approval of the Board within five (5) years from the date of acquisition, then it shall pay twice the amount of the tax credit given it. However, the Board shall allow and approve the sale, transfer, or disposition of the said items within the said period of five (5) years if made (1) to another registered enterprise; (2) for reasons of proven technical obsolescence; or (3) for purposes of replacement to improve and/or expand the operations of the enterprise."

"(h) Deduction for Expansion Reinvestment. — When a registered enterprise reinvests its undistributed profit or surplus, whether from registered operations or not, by actual transfer thereof to the capital stock of the corporation for procurement of machinery, equipment and spare parts previously approved by the Board under subsections 'd' and 'e' hereof or for the expansion of machinery and equipment used in production or for the construction of the buildings, improvements or other facilities for the installation of the said machinery and equipment, the amount so reinvested, to the extent of twenty-five per cent (25%), thirty-seven and one-half per cent (37½%), fifty per cent (50%), in case of non-pioneer projects and to the extent of fifty per cent (50%), seventy-five per cent (75%), one hundred per cent (100%) in the case of pioneer projects, the appropriate percentage to be determined by the Board for each industry taking into account the relative risk, technology, transfer and fall-out, export potential,, incremental labor, use of locally manufactured machinery and equipment and domestic raw materials, shall be allowed as a deduction from its taxable income in the year in which such reinvestment was made: Provided, (1) That prior approval of the Board of such reinvestment was obtained by the registered enterprise planning such reinvestment and (2) that the registered enterprise does not reduce its capital stock represented by the reinvestment within seven (7) years from the date such reinvestment was made. In the event the registered enterprise does not order the machinery and equipment within two (2) years from the date the reinvestment was made or reduces its capital stock represented by the reinvestment within a period of seven (7) years from the date of reinvestment, a recomputation of the income tax liability therefor shall be made for the period when the deduction was made, and the proper taxes shall be assessed and paid with interest."

"(k) Deduction for Labor Training Expenses. — An additional deduction from taxable income of one half of the value of labor training expenses incurred for upgrading the productivity and efficiency of unskilled labor shall be granted to a registered enterprise: Provided, That such training program is duly approved by the appropriate government agency or in the absence thereof by the Board: And provided, further, That such deduction shall

not exceed ten per cent (10%) of direct labor wage."

SEC. 2. Subsection (a) of Section Eight of the same Act is hereby amended as follows:

"SEC. 8. Incentives to a Pioneer Enterprise. — In addition to the incentives provided in the preceding section, pioneer enterprises shall be granted the following incentive benefits:

"(a) Tax Exemption. — Exemption from all taxes under the National Internal Revenue Code, except income tax, from the date the area of investment is included in the Investment Priorities Plan to the following extent:

- (1) One hundred per cent (100%) for the first five years;
- (2) Seventy-five per cent (75%) for the sixth through the eighth year;
- (3) Fifty per cent (50%) for the ninth and tenth year;
- (4) Twenty per cent (20%) for the eleventh and twelfth years; and
- (5) Ten per cent (10%) for the thirteenth through the fifteenth year.

Provided, That the above schedule shall apply only to enterprises registered in areas included for the first time in the sixth or subsequent Investment Priorities Plan or therein carried over from the previous Investment Priorities Plan: Provided, however, That in areas previously declared preferred and/or carried over the sixth or subsequent Investment Priorities Plan and wherein enterprises have already registered, the exemption herein provided shall be as follows:

- (1) One hundred per cent (100%) up to December 31, 1972;
- (2) Seventy-five per cent (75%) up to December 31, 1975;
- (3) Fifty per cent (50%) up to December 31, 1977;
- (4) Twenty per cent (20%) up to December 31, 1979;
- (5) Ten per cent (10%) up to December 31, 1981;

Provided, further, That subject to the approval of the National Economic Development Authority, the Board may extend the duration of the tax exemption provided in any bracket for pioneer projects whose total costs would exceed one hundred million pesos (P100,000,000) subject to the condition that in no case shall the total period of exemption herein exceed twenty (20) years."

SEC. 3. Section Nine of the same Act is hereby repealed in toto, any provision of law to the contrary notwithstanding and in lieu thereof, the following special export incentives, may be availed of by a registered enterprise.

"SEC. 9. Special Export Incentives for Registered Enterprises. — Registered enterprises may be entitled to the following special incentives for exports of their registered products and commodities: "(a) Special Tax Credit. — A tax credit equivalent to the sales, compensating and specific taxes and duties on the supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof, whether exported directly by the registered enterprise or sold to another export producer which uses such sold product as a direct input in export products manufactured or processed by it and subsequently exported, or to an export trader: Provided, That the tax credit shall accrue to the registered enterprise only after the export producer or export trader has in fact exported the products of the export producer or those in the manufacture or processing of which such inputs were used.

"(b) Reduced Income Tax. — Registered enterprises shall be entitled for the first five years from its registration, to deduct from its taxable income an amount equivalent to the sum of the direct labor cost and local raw materials utilized in the manufacture of its completely finished export products: Provided, however, That such deduction shall in no case exceed twenty-five per centum (25%) of its total export revenue.

"Before registered enterprises may avail themselves of the foregoing export incentives benefits, they shall

apply first with the Board, which shall approve the application upon proof: (1) that the enterprise proposes to engage in good faith in creating a market for its products abroad; (2) that the product to be exported is one included in the government priorities plan as suitable for export, or if not so included, that its export will not adversely affect the needs of the domestic market for the finished product to be exported or for the domestic raw materials used in its manufacture; (3) that the enterprise has or will set up an adequate accounting system to segregate revenues, purchases and expenses of its export market operations from those of its domestic market operations; and (4) that the exported products and commodities meet the standards of quality established by the Bureau of Standards or, in default thereof, by the Board.

"The Board may suspend or cancel wholly or partially the above deduction under this section whenever any action is threatened or taken by an international association or foreign nation which would nullify the purposes of said incentive and would impair or threaten to impair the export trade of the Philippines or its relations with other nations."

SEC. 4. Section Thirteen of the same Act is hereby amended, as follows:

"SEC. 13. Board of Investments. — The Board of Investments shall be composed of five full-time members to be appointed by the President of the Philippines with the consent of the Commission on Appointments, from a list of nominees submitted by the Chamber of Commerce of the Philippines, the Chamber of Industries, Base Metals Producers Association, Gold Producers Association, Chamber of Agriculture and Natural Resources of the Philippines, the Bankers Association of the Philippines and other similar business organizations as well as from duly organized and existing labor confederations, federations and other organizations of national standing in the Philippines from which the President may request nominees: Provided, That each association shall submit a list of not less than three (3) but not more than five (5) nominees and that no association shall have more than one member in the Board at any particular time: And Provided, further, That the President may appoint as members of the Board qualified persons who have not been so nominated. The Board shall elect a Chairman and a Vice-Chairman from among themselves. The tenure of office of each member shall be six (6) years: Provided, however, That the members of the Board first appointed shall

hold office for two (2) years; three (3) years, four (4) years, five (5) years and six (6) years as fixed in their respective appointments: Provided, further, That upon the expiration of his term, a member shall serve as such until his successor shall have been appointed and qualified: Provided, furthermore, That no vacancy shall be filled except for the unexpired portion of any term, and that no one may be designated to be a member of the Board in an acting capacity, but all appointments shall be ad interim or permanent: Provided, finally, That a member of the Board may serve as director of government owned or controlled corporation."

SEC. 5. Section Fourteen of the same Act is hereby amended by deleting the last sentence thereof and shall read as follows:

"SEC. 14. Qualifications of Members of the Board.— The members of the Board shall be citizens of the Philippines, at least thirty (30) years old, of good moral character and of recognized competence in the field of economics finance, banking, commerce, industry agriculture, engineering management, law or labor, such competence to be certified by the association making the nomination or by the association whole members belong to the same profession, calling or occupation as the person appointed." Act is hereby amended to read as follows:

SEC. 16. Powers and Duties of the Board. — The Board shall meet as often as may be necessary, but not than once each week on such day as it may fix. Notice of special meeting shall be given all members of the Board and proof of such notice shall be spread upon the minutes. The presence of three (3) members shall constitute a quorum; and the affirmative vote of (3) members in a meeting validly held shall be necessary to exercise its powers and perform its duties, which shall be as follows:

- Draw up annually an investment priorities plan in the manner prescribed in Section eighteen which shall be the basis for the implementation of this Act;
- Promulgate such rules and regulations as may be necessary to implement the intent and provisions of this Act, which rules and regulations shall take effect thirty (30) days after their publication in two (2) newspapers of general circulation in the Philippines;
- Process and approve, imposing such terms and conditions as it may deem necessary to promote the objectives of this Act, including refund of incentives availed or to be availed by an enterprise in amounts to be determined by the Board, applications for registration under this Act, and issue the proper certificate of registration upon payment of the necessary fees, which shall not exceed two hundred pesos;
- After due hearing, decide controversies concerning the implementation of this Act that may arise between registered enterprises or investors therein and government agencies within thirty (30) days after the controversy has been submitted for decision: Provided, That the investor or the registered enterprise may appeal the decision of the Board within fifteen (15) days from receipt thereof to the Court of First Instance of the City of Manila or of the city or province where the principal office of the registered enterprise is located, in the manner provided for by the Rules of Court in cases of this nature;
- Recommend to the Commissioner of Immigration the entry into the Philippines for employment of foreign nationals as permitted in Sections seven and eight of this Act;
- Periodically check and verify, either by inspection of the books or by requiring regular reports, the proportion of the participation of Philippine Nationals in a registered enterprise to ascertain compliance with its qualification to retain registration under this Act;
- Periodically check and verify the compliance by registered enterprises with the provisions of this Act, with the rules and regulations promulgated under this Act and with the terms and conditions of registration;
- After notice and hearing, cancel the registration or suspend the enjoyment of incentive benefits of any registered enterprise or require refund of incentives enjoyed by such enterprise including interest and monetary penalties, for (1) failure to maintain the qualifications required by this Act for registration, or (2) for willful or grossly negligent violation of any provision of this Act, of the rules and regulations issued under this Act, or the terms and conditions of registration, or of laws for the protection of labor or of the consuming public: Provided, That the registered enterprise affected by the order of cancellation or suspension may appeal within fifteen (15) days from the receipt of the order to the Court of First Instance of the City of Manila or of the city or province where the principal office of the registered enterprise is located;
- Appoint, discipline and remove, and determine the compensation of its technical staff and other personnel: Provided, That except as to the technical staff and such other positions as the Board may declare to be highly technical or primarily confidential, all positions in the Board are subject to the provisions of the Civil Service Law and Rules, but are exempt from the regulations of the Wage and Position Classification Office;
- Prepare or contract for the preparation of feasibility and other pre-investment studies for pioneer areas either upon its own initiative or upon the request of Philippine Nationals who commit themselves to invest therein and show the capability of doing so, and upon condition that in no case shall the expenditure of the Board exceed one hundred twenty-five thousand pesos (P125,000) per study: Provided, That if venture is implemented, then the amount advanced by the Board should be repaid within five (5) years from the date the commercial operation of said enterprise starts;

- Require registered enterprises to list their shares of stock in any accredited stock exchange or directly offer a portion of their capital stock to the public and/or their employees;
- Recommend to the National Economic Development Authority guidelines for the rationalization of certain industries whose continued operation will result in the dislocation of and/or overcrowding in said industries, thus retarding economic growth, and upon approval thereof, the Board shall have the power to implement the same and in appropriate cases, recommend to the President, after due hearing and notice, to restrict, either totally or partially, the importation of any equipment or raw materials for firms in the industry not conforming with the prescribed guidelines.
- In appropriate cases and upon approval of the National Economic Development Authority, suspend the nationality requirement provided for in this Act or any other nationalization statute in case of international complementation arrangements for the manufacture of a particular product on a regional basis to take advantage of economies of scale;
- Within four (4) months after the close of the fiscal year, submit annual reports to the President and Congress, with copies to each member thereof, which shall cover its activities in the administration of this Act, including recommendations on investment policies; and
- Generally, exercise all the powers necessary or incidental to attain the purposes of this Act."

SEC. 7. The first two paragraphs of Section Eighteen of the same Act are hereby amended to read as follows:

"SEC. 18. Preferred and Pioneer Areas of Investment. —The Board of Investments shall submit to the President not later than the end of January of every year, through the National Economic Development Authority, an Investment Priorities Plan, as defined in Section three, paragraph (k) of this Act.

"In determining the preferred and pioneer areas of investment and their corresponding measured capacities, the Board shall determine which areas of investment best accomplish the policy declared in this Act, including those which will economically produce goods for domestic use in substitution for goods being imported in large quantities, and especially those which will process further and thereby increase the value of agricultural, mining and timber products already being produced for export or which will make products at costs low enough to be sold competitively in export markets."

SEC. 8. Paragraph (a) Section Nineteen of the same Act is hereby amended to read as follows:

"SEC. 19. Qualification of Applicants. — To be entitled to registration, an application must satisfy the Board that:

(a) It possesses the qualifications prescribed for registered enterprises in Section three, paragraph (b) of this Act; or if it does not possess the required degree of ownership by Philippine Nationals, the following circumstances must be satisfactorily established:

- (1) That it is otherwise qualified under Section three, paragraph (b) of this Act;
- (2) That it proposes to engage in a pioneer project, as defined in Section three, paragraph (h) of this Act which, considering the nature and extent of capital requirements, processes, technical skills and relative business risks involved, is in the opinion of the Board of such a nature that the available measured capacity thereof cannot be readily and adequately filled by Philippine Nationals;
- (3) That it obligates itself to attain the status of a Philippine National, as defined in Section three, paragraph (f) of this Act within thirty (30) years from the date of registration by having its shares of stock listed with a Philippine stock exchange within fifteen (15) years from the date of registration and actually offering for sale the said shares to Philippine Nationals immediately after the said period: Provided, however, That in case of a

registered enterprise exporting at least seventy per cent (70%) of its total production, it shall attain the status of a Philippine National within forty (40) years from the date of registration by listing its shares of stock within twenty-five (25) years from the date of registration and actually selling its shares after the said period: Provided, further, That the Board may extend this period for another ten (10) years, subject to such conditions as it may impose in the national interest, and upon proof by the registered enterprise that it has exerted its best efforts to sell the required number of shares to Philippine Nationals, as required by this Section but Philippine Nationals have not bought the same and for such other cause as the Board may deem sufficient to justify the extension of the period;

"(4) That the pioneer area it will engage in is one that is not within the activities reserved by the Constitution or other laws of the Philippines to Filipino citizens or corporations owned or controlled by Filipino citizens."

SEC. 9. The last two paragraphs of Section Twenty of the same Act are hereby amended to read as follows:

"SEC. 20. Application. —

* * * * *

A non-Philippine National may engage in non-pioneer areas of investment where Philippine Nationals are already engaged only after three (3) years from the date of declaration of the area as preferred if the measured capacity has not been filled within the said period, except where such non-Philippine National shall engage, without incentives, unless otherwise registered under Republic Act Numbered Sixty-one hundred thirty-five in the manufacture of finished products primarily for export. The Board shall fix the percentage of production that must be exported by a non-Philippine National in order to be deemed to be engaged in manufacture primarily for export, which percentage shall not be less than seventy per cent (70%) of its total production.

Any order or decision of the Board under this Section may be appealed within thirty (30) days from receipt of said order or decision to the National Economic Development Authority. Upon failure on the part of the National Economic Development Authority to act within a period of ninety (90) days, the decision of the Board shall be deemed upheld. The Board or the enterprise applying for registration under this Act may appeal the decision of the National Economic Development Authority to the President within thirty (30) days from its promulgation."

SEC. 10. Paragraph (a) of Section Twenty-Five of the same Act is hereby amended to read as follows:

"SEC. 25. Applicability and Interpretation. — In interpreting and applying the provisions of this Act, the following rules shall be observed:

"(a) Applicability to Existing Enterprises. — An enterprise which satisfies the definition of a 'Philippine National' engaged in a preferred area of investment at the time of its declaration as such, shall be entitled to registration as to its existing capacity, as well as to such an expansion or enlargement thereof requiring new or additional machinery and equipment as shall be within the unfilled measured capacity of the area; so also, an investor in such an existing enterprise shall be entitled to benefits and incentives to the extent of his present as well as new or additional investment therein: Provided, That the application is filed while the area is still in the Investment Priorities Plan: Provided, however, That the benefits of this Act, so far as may be applicable to such existing enterprises and investors in such existing enterprises, shall be given prospective effect only from the date of registration."

SEC. 11. The last paragraph of Section 4 of R.A. 5455 is hereby amended and anew section to be designated as Section 9-A is hereby added:

"SEC. 4. Licenses to do Business. —

The above requirement shall be in addition to those set forth in the Corporation Law as amended, for licensing

foreign corporations and a violation of any of these requirements or of the terms and conditions which the Board may impose shall be sufficient cause to cancel a license or permit issued pursuant to this Act: Provided, however, That aliens or foreign firms, associations, partnerships, corporations or other forms of business organization or existing under the laws of the Philippines who may lawfully have been licensed to do business in the Philippines prior to the effectivity of this Act shall, with respect to the activities for which they were licensed and actually engaged in prior to the effectivity of this Act, not to be subject to the provisions of this section but shall be subject to the reporting requirements prescribed by the Board: Provided, further, That where the issuance of said license has been irregular or contrary to law, any person adversely affected thereby may file an action with the Court of First Instance where said alien or foreign business organization resides or has its principal office to cancel the said license. In such cases, no injunction shall issue without notice and hearing, and appeals and other proceedings for review shall be filed directly with the Supreme Court.”

“SEC. 9-A. Periodic Reports. — The Board shall periodically check and verify compliance with the provisions of this Act, either by inspection of the books or by requiring reports from aliens or foreign firms, domestic enterprises with foreign investments in excess of thirty per cent (30%) and new entities licensed to do business under Section four of this Act. Nothing herein shall be deemed to preclude the Board from requiring similar reports from domestic firms with foreign investments of less than thirty per cent (30%).

“ A summary of said reports shall be annually submitted by the Board to Congress not later than January fifteen. For this purpose, the Board may require other government agencies licensing and/or regulating foreign enterprises of domestic firms with foreign equity, to furnish the Board with reports on such foreign investments.”

SEC. 12. Paragraphs (b), (c), (d), (f) and (g) of Section Three of Republic Act Numbered Sixty-one hundred and thirty-five are hereby amended to read as follows:

“SEC. 3. Definition of Terms. — For purposes of this Act:

“(a)

“(b) ‘Registered Export Producers’ shall mean any person, corporation, partnership or other entity organized and existing under Philippine laws, (1) registered with the Board in accordance with this Act, (2) engaged or proposing to engage in the manufacture or processing of export products as hereinbelow defined, and (3) directly exporting its export products, or selling them (a) to a registered export trader that subsequently exports said products, or (b) to other export producers who utilize said products as direct inputs in subsequently manufactured or processed by them and thereafter exported, or (c) to foreign tourists and foreign travelers in areas covered by Tourism Priorities Plan and subject to the guidelines prepared by the Philippine Tourist Commission and the Board.

“(c) ‘Registered Export Trader’ shall mean any person, corporation, partnership or other entity organized and existing under Philippine laws.

(1) Registered with the Board in accordance with this Act and (2) which derived at least twenty per cent (20%) of its gross income for the year in which the incentives are claimed, from the sale abroad of export products bought by it from one or more export producers or from domestic sale to foreign tourists and foreign travelers in areas covered by the Tourism Priorities Plan and subject to the guidelines prepared by the Philippine Tourist Commission and the Board.”

“(d) ‘Registered Service Exporter’ shall mean a person, corporation, partnership or other entity organized and existing under Philippine laws, (1) registered with the Board in accordance with this Act and (2) engaged or proposing to engage (a) rendering technical, professional or other services which are paid for in foreign currency including, but not limited to, the fields of law, medicine, accounting, management, valuation and

appraisals, engineering, construction, geodetics, surveying, teaching, pharmacy, nursing, cultural presentations or promotions, works of arts, and entertainments; (b) in exporting television and motion pictures and musical recordings made or produced in the Philippines, either directly or through a registered export trader; or (c) in rendering services for foreign tourists and foreign travelers covered by the Tourism Priorities Plan and subject to the guidelines prepared by the Philippine Tourist Commission and the Board."

"(f) ' Export Sales ' shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer or registered export trader, or the net selling price of export products sold by a registered export producer to another export producer, or registered export trader who subsequently exports the same, or the net selling price of export products in acceptable foreign currencies sold by a registered export producer or registered export trader to foreign tourists and foreign travelers under certain conditions to be prescribed by the Board, but sales of export products to another registered export producer or to a registered export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents. Exportation of goods or consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee.

"(g) ' Export Fees ' shall mean the total foreign exchange which is charged or received by a registered service exporter for furnishing or performing services, or permitting the showing or playing, outside of the Philippines, of television or motion pictures or musical recordings. It shall also include fees in acceptable foreign currencies received by service exporters catering to foreign tourists and foreign travelers under certain conditions to be prescribed by the Board."

SEC. 13. Section Four of Republic Act Numbered Sixty-one hundred and thirty-five is hereby amended to read as follows:

"SEC. 4. Export Priorities Plan. — Not later than the end of January of every year the Board shall submit to the President, through the National Economic Development Authority, an export priorities plan setting forth the export products that should be encouraged with priority, considering:

- (a) the comparative advantage they enjoy or could be made to enjoy;
- (b) their potential for earning foreign exchange; and
- (c) their profitability to the national economy.

"Within the same period, the Philippine Tourist Commission shall submit to the President through the National Economic Development Authority, a Tourism Priorities Plan setting the required tourism facilities in various regions which can qualify for incentives. The Export Priorities Plan and the Tourism Priorities Plan shall be acted upon and take effect, and may be amended, following the procedure for, and with like effect as, the investments priorities plan."

SEC. 14. Section Six, paragraph (b) of Republic Act Numbered Sixty-one hundred thirty-five is hereby amended to read as follows:

"SEC. 6. Conditions for Availment of Incentives.

"(a) * * *

"(b) To be entitled to registration, an applicant must satisfy the Board that (1) he is a citizen of the Philippines, in case the applicant is a natural person, or that at least sixty per cent (60%) of its capital is owned and controlled by citizens of the Philippines, in case the applicant is a corporation, partnership or other entity; (2) that it is engaged or proposes to engage in manufacturing, processing or exporting export products listed in the export priorities plan or tourism priorities plan, or if not so listed in the export priorities plan, that at least fifty per cent (50%) of its sales are export sales; or in case of a service exporter, that it is engaged or proposes to

engage in rendering services payable in foreign currency, providing services to foreign currency, providing services to foreign tourists and foreign travelers in areas with the Tourism Priorities Plan and subject to the guidelines prepared by the Philippine Tourism Commission and the Board, or in exporting television or motion pictures or musical recordings produced or made in the Philippines; (3) that it is not engaged and will not engage in any of the activities reserved by the Constitution or the laws of the Philippines to Filipino citizens or corporations owned and controlled by Filipino citizens, unless and until the applicant can fulfill the requirements of the Constitution or said laws; and (4) that if the applicant is engaged or proposes to engage in activities other than the manufacture, processing and exportation of export products, or in rendering services other than export services, it has installed or undertakes to install an adequate accounting system to segregate the investments, revenues, sales, receipts, purchases, payrolls, costs, expenses, and profits and losses of its export operations from those of its domestic operations: Provided, That in the case of: (i) a pioneer enterprise herein registered, as defined under Section 3 (h) of Republic Act Numbered Fifty-one hundred eighty-six, (ii) a service exporter primarily engaged in the business of catering to foreign tourists and foreign travelers, and (iii) an export producer seventy per cent (70%) of whose total production is to be exported, the nationality requirement shall be in accordance with Section nineteen of the said Act instead of Section six, paragraph (b) of this Act: Provided, further, That in the latter case, the Board may increase the seventy per cent (70%) export requirement in the event of an adverse effect on the domestic producers of the export product: Provided, furthermore, That upon receipt of the application for registration, the Board shall, within thirty (30) days, notify the applicant of all pertinent requirements not complied with: And Provided, finally, That the Board of Investments shall act on said application within ninety (90) days after submission thereof."

SEC. 15. Section Seven, excluding paragraphs (c) and (d), Republic Act Numbered Sixty-One hundred Thirty-Five is hereby amended to read as follows:

"SEC. 7. Incentives to Registered Export Producers. — Registered export producers, unless they already enjoy the same privileges under other laws, shall be entitled to the incentives set forth in paragraphs (g), (h), (i), (j) and (k) of Section seven of Republic Act Numbered Fifty-one hundred eighty-six, known as the Investment Incentives Act; and registered export producers that are pioneer enterprises shall be entitled also to the incentives set forth in paragraphs (a), (b) and (c) of Section eight of the said Act. In addition to the said incentives, and in lieu of other incentives provided in Sections seven and nine of that Act, registered export producers shall be entitled to benefits and incentives as enumerated hereunder:

- Tax Credit. — Every registered export producer shall enjoy a tax credit equivalent to the sales, compensating and specific taxes and duties on the supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof, whether exported directly by the registered export producer or sold to another export producer, which uses such sold product as a direct input in export products manufactured or processed by it and subsequently exported or to a registered export trader: Provided, That the tax credit shall accrue to the registered export producer only after the other export producer or registered export trader has in fact exported the products of the export producer or those in the manufacture or processing of which such inputs were used. The tax credit shall be issued by the Secretary of Finance, upon presentation of the export documents, and shall be in lieu of refunds. It may be used to pay taxes, duties, charges, and fees due to the National Government in connection with its operations. A tax credit shall be non-transferrable, except when such transfer is by hereditary succession or occurs by operation of law; it may be used by the person or entity to whom it is issued only for as long as it enjoys the benefits and incentives provided for in this Act; and may not be used so as to result in a refund.

- Reduced income tax. — Every registered export producer, except those registered under Section six, paragraph (b), subsection (iii) of this Act, shall be entitled for the first five (5) years from the registration, to deduct from its taxable income an amount equivalent to the sum of the direct labor cost and local raw materials utilized in the manufacture of its export products: Provided, however, That such deduction shall in no case exceed twenty-five

per centum (25%) of its total export revenue.

- Exemption from Export Tax. — The provisions of law to the contrary notwithstanding, exports by a registered export producer, of its registered export product shall be exempted from the export tax, impost or fee, including the stabilization tax under Republic Act Numbered Sixty-one hundred twenty-five."

SEC. 16. Section Eight of Republic Act Numbered Sixty-One hundred thirty-five is hereby amended to read as follows:

"SEC. 8. Incentives to Registered Export Traders. — A registered export trader shall be entitled to (a) exemption from export tax provided in paragraph (e) of Section seven of this Act, for export products bought by it from registered export producer/s qualified to avail of such exemption from export tax; (b) to a tax credit equivalent to the amount of specific and sales taxes on the registered export products bought by it from export producers and subsequently exported; and (c) for the first five (5) years from registration, to deduct from its taxable income, in addition to the normal deductions allowed by the National Internal Revenue Code, an amount equivalent to ten per cent (10%) of its total export sales. For a period of five (5) years after registration, an additional deduction of one per cent (1%) shall be allowed a registered export trader who extends financial assistance to a registered export producer or producers in an amount equivalent to not less than twenty per cent (20%) of the registered export trader's total export sales during the year in which the incentive is claimed."

SEC. 17. Section Ten of Republic Act Numbered Sixty-one hundred and thirty-five is hereby amended to read as follows:

"SEC. 10. Incentives to Registered Service Exporters. — Every registered service exporter shall, for the first five (5) years from registration, be entitled to deduct from its taxable income an amount equivalent to fifty per cent (50%) of its total export fees during the year in which the incentive is claimed: Provided, That to be entitled to this deduction, the registered service exporter must have remitted or repatriated to the Philippines in acceptable foreign currencies its total export fees earned during the year in which the incentive is claimed, less reasonable costs and expenses incurred or payable in foreign currencies, under such rules and regulations as the Monetary Board may prescribe. In addition, for a period of five (5) years from registration, a registered service exporter who produces television or motion pictures, or musical recordings, in the Philippines, and exports the picture or recording directly or through a registered export trader shall also be entitled (a) to a tax credit equivalent to the amount of specific, compensating and sales taxes and duties paid by it on the raw materials and supplies used in producing the picture or recording that is exported; and (b) to exemption from payment of customs duties and compensating taxes on importations of equipment, machinery or spare parts shipped with such machinery and equipment that (1) are not manufactured domestically in reasonable quantity and quality or sold at reasonable prices; (2) are directly and actually needed and will be used by the registered service exporter in producing or making the pictures or recordings that it exports; (3) are covered by shipping documents in the name of the registered service exporter to whom the shipment will be delivered direct by customs authorities; (4) have the approval of the Board of Investments obtained by the registered service exporter before placing the order for the importation; and (5) are the subject of international bidding, under the supervision of the Board, unless the Board dispenses with this condition for any of the reasons set forth in Section seven, paragraph (c) of this Act. If the registered service exporter does not bring into the Philippines export fees equivalent to at least the cost of the imported machinery, equipment, and spare parts within five (5) years after delivery of the same to it, or if it sells, transfers, or disposes of the same or any part thereof, without prior approval of the Board, within said five (5) years, it shall pay twice the amount of the exemption given it, together with the penalty and interest thereon, computed from the date of delivery, fixed by the Tariff and Customs Code and the National Internal Revenue Code for delinquency in the payment of duties and taxes. However, the Board shall allow and approve the sale, transfer or disposition within the said period of five (5) years, if the registered service exporter has brought into the Philippines export fees during the period it has held the equipment which amount to twenty per cent (20%) of the cost of the equipment for each year in which

it has held the equipment; and if made (1) to another registered service exporter of pictures and recordings; (2) for reasons of proven technical obsolescence; or (3) for purposes of replacement to improve or expand the operations of the registered service exporter. A similar incentive of tax and duty-free importation of equipment, machinery and spare parts shipped with such machinery and equipment under the same conditions as above enumerated shall be granted to service exporters engaged primarily in catering to foreign tourists and foreign travelers in preferred areas covered by the Tourism Priorities Plan and within the guidelines prescribed by the Philippine Tourist Commission and the Board.

SEC. 18. All acts, executive orders, administrative orders, rules and regulations or parts thereof inconsistent with the provisions of this Decree are hereby repealed or modified accordingly.

SEC. 19. Effectivity. — This Decree shall take effect from its approval.

Done in the City of Manila, this 6th day of January, in the year of Our Lord, nineteen hundred and seventy-three.

(Sgd.) FERDINAND E. MARCOS
President
Republic of the Philippines

By the President:

(Sgd.) ALEJANDRO MELCHOR
Executive Secretary

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