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GUIDELINES TO IMPLEMENT REPUBLIC ACT NO. 7369 RE: TAX AND DUTY EXEMPTION AND TAX CREDIT ON CAPITAL EQUIPMENT

BOIN, June 25, 1992

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Pursuant to Sec. 7 of Republic Act No. 7369 entitled AN ACT GRANTING TAX AND DUTY EXEMPTION AND TAX CREDIT ON CAPITAL EQUIPMENT, the following guidelines are hereby formulated for the implementation of the intent and provisions of said Act.

SECTION 1. Definition of Terms. - For purposes of these guidelines -

Act shall mean Republic Act No. 7369 entitled AN ACT GRANTING TAX AND DUTY EXEMPTION AND TAX CREDIT ON CAPITAL EQUIPMENT.

Domestic Manufacturer is one who, aside from processing the nationality requirements prescribed under Sec. 5 of the Act, also manufactures/produces capital equipment eligible for incentives under Sec. 2 and 12 hereof and which capital equipment/article contains value added equal to a percentage acceptable to the Board.

The definition of terms under both Executive Order No. 226 otherwise known as the Omnibus Investments Code of 1987 and the implementing rules and regulations thereof shall be use whenever applicable.

SECTION 2. Tax and Duty Exemption on Imported Capital Equipment. - Until December 31, 1994 or within five (5) years from date of registration, whichever comes first, registered new or expanding enterprises may be authorized by the Board to import machinery, equipment and accompanying spare parts exempt from the tariff duties and taxes payable thereon to the extent of one hundred percent (100%) subject to the following conditions:

1. That the machinery or equipment to be imported is not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices. Machineries and equipment shall not be considered available in sufficient quantity if they cannot be made available to the registered enterprise at the time of need or within a reasonable period. In determining whether quality is comparable, the test, among others, will be whether or not production process and efficiency will be adversely affected or will result in poor quality products or increased cost of production. In determining reasonableness of the process quoted by the domestic manufacturers, the Board may be guided by the acquisition cost of similar machinery, equipment and/or spare parts imported into the Philippines, if all applicable taxes and duties were paid thereon, plus fifteen per cent (15%) mark-up.

2. That the machinery or equipment to be imported are directly needed and will be used exclusively by the registered enterprise in the manufacture of its products or in the operation of its registered activity. Non-production equipment to be used exclusively by the registered enterprise and reasonably needed in the registered operations may likewise be entitled to incentives provided for under this section if such equipment can be classified under any of the following:

a)

Utility equipment such as boilers, compressors, power generators, together with their accessories and auxiliary equipment;

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b)

In-plant/in-farm material and product handling equipment and post harvest equipment;

c)

Maintenance equipment;

d)

Specialized transport equipment such as those used in mining and in logging;

e)

Laboratory equipment such as those used to test product quality:

f)

Pollution control equipment;

g)

Devices used to protect equipment and safety devices used to protect workers which are not otherwise classified as supplies;

h)

Special furniture or fixtures designed to make operations efficient (i.e. reduce the number of rejects) or improve product quality or enhance productivity, e.g. ergonomically designed fixtures;

i)

Computers used in aid of production;

j)

Immovable fire-fighting facilities; or

k)

Structural building components required to be able to maintain a controlled environment inside the plant such as those used in buildings for yarn manufacturing or those used in maintaining a clean room environment for

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semiconductor plants or those used in greenhouses.

With its prior approval, the Board may authorize the permanent use of imported capital equipment for non-registered activities upon payment of proportionate taxes and duties thereon. The Board may, with prior approval and subject to conditions as it may impose, also allow under justifiable circumstances, the temporary use of imported capital equipment for non-registered activities to maximize usage thereof.

3. That the approval of the Board is obtained by the registered enterprise before the purchase order is made or before the corresponding letters of credit are opened. Advance authority to import machinery or equipment may be allowed subject to the discretion of the Board which shall take into account the urgent need and the financial capability of the applicant.

4. Subject to reasonable allowance, the rated capacity of the machinery or equipment to be imported is within the registered capacity of the registered enterprise.

SECTION 3. Spare Parts. - The importation of spare parts shall be restricted to spare parts for the specific machinery and/or equipment authorized to be imported and shall cover no more than those as normally accompanying the original shipment and highly essential to the functioning of the machinery and/or equipment: Provided, That as a general rule, the cost of such spare parts shall not exceed ten per cent (10%) of the cost of the machinery or equipment where they will be used. As a rule, spare parts imported in excess of the said quantity or purchased separately from the machinery and/or equipment shall not be entitled to tax exemption under the provisions of the Act but may be entitled to incentives under Article 39(m) of Executive Order No. 226, if qualified. However, except in cases of spare parts for transport facilities wherein the foregoing rule shall be strictly applied, the Board may, in its discretion, grant incentives for the importation of spare parts, which under justifiable circumstances, could not be shipped together with the main equipment, provided such separate importation of spare parts are made within one (1) year from the date of acquisition/arrival of the original equipment.

SECTION 4. Validity of Authority to Import. - The certificate of authority to import issued under the Act shall be valid for a period of one (1) year from the date of issuance unless otherwise provided. Extension of the period of validity may be granted in meritorious cases provided that the request for such extension should be filed before the expiration of the period sought to be extended and, provided, further, that more than 50% of the value of the capital equipment listed in said certificate of authority have already been imported.

Unless sooner revoked by the Board, the period of validity of Certificate of Authority issued on or after August 12, 1991, but before the effectivity of the Act are deemed extended under these guidelines for a period of one (1) year reckoned for the date of issuance appearing in said certificate of authority, provided that said extension shall not go beyond five (5) years reckoned from the enterprise's date of registration.

SECTION 5. Publication. - The Board may require publication, in a newspaper of general circulation, of a notice to purchase machinery and equipment which may be domestically manufactured together with a list of capital equipment proposed to be imported, for the information of all domestic companies concerned. Domestic manufacturers of machinery, equipment and spare parts shall submit to the Board, within fifteen (15) calendar days from the date of publication, their offer to supply the equipment and/or spare parts proposed to be imported.

SECTION 6. Conditions for Importation. - Final Board approval of the importation of the equipment shall be covered by a certificate of authority, subject to the following conditions:

1. The importation should be covered by shipping documents in the name of the applicant as consignee to whom the shipment will be delivered directly by Customs authorities;

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2. For purposes of the issuance, of the release certificate, the applicant shall submit to the Department of Finance, official import documents indicating the description, quantity and price of the capital equipment imported, the names of the supplier and carrying vessel, and its anticipated or actual date or arrival, together with the certificate mentioned in Section 4 hereof. Copies of the release certificate issued by the Department of Finance and pertinent documents shall be furnished to the Board for monitoring and statistical purposes;

For Purposes of issuance of Central Bank Release Certificate, the applicant firm shall submit to the Central Bank copies of shipping and other related documents.

3. The capital equipment shall be installed and/or used in the site indicated by the applicant and shall not be used or transferred elsewhere without the prior approval of the Board.

4. The foreign manufacturer/supplier shall inscribe on the equipment the phrase

"IMPORTED TAX AND DUTY FREE
UNDER E.O. NO. 226, AS AMENDED".
SECTION 7. Notice of Board Action - The action of the board on the application, whether it be approval or disapproval, shall be communicated in writing to the applicant. Copies of certificates of authority to import shall also be sent to the Department of Finance/Bureau of Customs and the Bureau of Internal Revenue.

SECTION 8. Performance Bond. - The posting of performance bond equivalent to the taxes and duties waived on imported capital equipment shall be a pre-condition to the exemption in cases of registered enterprises with export commitments where such companies have no track record of exports yet. In lieu of the bond, the Board may require a guarantee from the principal stockholder(s) or other form of guarantee to ensure performance. The Bond and/or guarantee shall be forfeited if the registered firm fails to meet any of its export commitments to the Board. The Board if it deems necessary may require a registered firm to post a performance bond to answer for its other commitments to the Board; e.g. value added, regional dispersal of industry, etc.

SECTION 9. Advice of Withdrawal; Periodic Inspection of Equipment. - After the equipment has been withdrawn from the Customs premises, the registered enterprise shall give written notice thereof to the Board. Thereafter, the enterprise shall inform the Board of the date of installation and the date of commercial operation. For importation of additional equipment, the Board shall be informed of the installation date within ten (10) days therefrom. Such equipment shall, at any reasonable time, be subject to inspection by the Board for the purpose of verifying whether it has been actually installed and is being used by the registered enterprises in the production or manufacture of its products in the preferred area.

SECTION 10. International Canvassing. - In order to ensure a fair and reasonable price of the imported capital equipment, the Board may require international canvassing. However, if the total cost of capital equipment or industrial plant exceeds US$5,000,000.00, the applicant enterprise is required to comply with the provisions of P.D. 1764 on international competitive bidding.

SECTION 11. Prior Approval of Sale or Disposition of Equipment. - Any sale, transfer or disposition, of capital equipment purchased under this Section within five (5) years from date of acquisition shall require prior approval from the Board, which approval shall be granted without refund of taxes and duties waived if the sale is made:

1. To another registered enterprise enjoying similar incentives;

2. For reasons of proven technical obsolescence as determined by the Board; or

3. For purposes of replacement to improve or expand the operations of the registered enterprises.

A sale, transfer or disposition of imported capital equipment not falling under any of the foregoing instances may,

after prior Board approval, be allowed within five (5) years from acquisition thereof, subject to the payment of taxes and duties waived, provided, however, that if the sale, transfer or disposition was made without prior Board approval, both the vendor and the transferee or assignee shall be solidarily liable to pay twice the amount of taxes and duties waived.

Noticed of the actions taken by the Board shall be furnished the Bureau of Internal Revenue.

Any sale, transfer or disposition made after five (5) years from date of acquisition shall not require prior Board approval but notice thereof shall be made within ten (10) days from the sale, transfer or disposition thereof.

SECTION 12. Tax Credit on Domestic Capital Equipment. -

1. Until December 31, 1994 or within five (5) years from date of registration, whichever comes first, registered enterprises shall be entitled, on all purchases of machinery, equipment and accompanying spare parts from a domestic manufacturer, to a tax credit equivalent to one hundred percent (100%) of the value of the customs duties and national internal revenue taxes that would have been waived had the same been imported under Article 39(c) of Executive Order No. 226, as amended, provided that the registered company may opt to get a tax credit under either E.O. 273 or the Act, for the tax portion; Provided, further, that if the registered company opts to get full tax credit under the Act the same shall be communicated to the Bureau of Internal Revenue.

2. Starting January 1, 1995, a domestic manufacturer, whether registered with the Board or not, of any of the articles enumerated under Sec. 3 of the Act shall be entitled to a tax credit equivalent to one hundred percent (100%) of the national internal revenue taxes, customs duties and levies actually paid on the raw materials used in the manufacture of the Article.

3. Starting January 1, 1995, the purchaser, whether registered with the Board or not, of any article referred to in Sec. 12(2) hereof shall likewise be entitled to a tax credit of one hundred percent (100%) of the value of the National Internal Revenue Taxes, customs duties imposed under Sec. 104 of the Tariff and Customs Code of 1978, as amended, and levies provided by law or presidential decree, had such article been imported.

4. To be eligible for tax credit under the Act, the equipment manufactured by a "domestic manufacturer" must have a value added equivalent to a percentage acceptable to the Board.

5. Value added for the equipment shall be at least twenty percent (20%) of its selling price. Value added herein means selling price of the equipment less cost of raw materials, supplies and utilities used in the manufacture thereof.

6. The above minimum value added percentage may be progressively increased by the Board when warranted by technological advances and other factors.

7. The conditions governing the sale, transfer or disposition of imported capital equipment provided for under Sec. 11 hereof; shall apply in the sale, transfer or disposition of capital equipment purchased before January 1, 1995 from domestic manufactures.

SECTION 13. Amendment of Period for Capital Equipment Incentives Under E.O. 226. - Certificates of Registration issued under E.O. 226 whose specific terms and conditions stipulate that capital equipment incentives are available only up to August 12, 1992, are generally deemed amended under these guidelines, such that entitlement to said capital equipment incentives shall be for a period of five (5) years reckoned from date of registration or until December 31, 1994, whichever comes first. However, in cases of special projects (e.g. rehabilitation of cement plants, etc.) entitlement to capital equipment incentives shall only be for the period originally prescribed by the Board.

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SECTION 14. Transferability of Tax Credit Certificates. - Tax credit certificates for taxes and duties actually paid on raw materials used in the manufacture of domestic capital equipment and tax credit certificates for taxes and duties that would have been paid on domestic capital equipment had the same been imported shall be issued by the Board of Investments through the ONE-STOP-SHOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER (CENTER) created under Administrative Order No. 226 dated February 7, 1992.

Except for those issued after December 31, 1994, tax credit certificates issued under these guidelines by the Board may be transferred in accordance with the Memorandum of agreement between the Department of Finance and the Board of Investments dated October 5, 1982 as amended by the same parties in an Agreement dated August 29, 1989.

SECTION 15. Applicability. - The Rules and Regulations To Implement Executive Order No. 226 otherwise known as the Omnibus Investments Code of 1987, unless inconsistent with the Act and these guidelines, shall apply whenever appropriate, on a suppletory character.

SECTION 16. Effectivity. - These guidelines shall take effect fifteen (15) days after publication in the Official Gazette and one (1) newspaper of general circulation in the Philippines.

Adopted 25 June 1992

(SGD.) LILIA R. BAUTISTA
Acting Chairman of the Board

(SGD.) TOMAS I. ALCANTARA
Vice-Chairman & Managing Head

(SGD.) ERNESTO M. ORDOÑEZ
Governor

(SGD.) THOMAS G. AQUINO
Governor

(SGD.) MELITO S. SALAZAR, JR.

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