

AN ACT AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED ONE THOUSAND SEVEN HUNDRED EIGHTY-NINE, ENTITLED "AN ACT PRESCRIBING THE NATIONAL POLICY IN THE PROCUREMENT AND UTILIZA...

REPUBLIC ACT NO. 3079, June 17, 1961

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

SECTION 1. Paragraph (a) of Section two of Republic Act Numbered One thousand seven hundred eighty-nine, as amended, is further amended to read as follows:

"(a) Capital goods and services.—Pursuant to the policy declared in Section one hereof, the capital goods and services received as reparations shall be made available only after due compliance with all the conditions specified in this Act to approved government projects for each year included in the economic and social development program adopted by the National Economic Council upon application from the agency concerned and duly endorsed by the proper department head concerned and the National Economic Council, as well as to Filipino citizens and entities wholly owned by Filipino citizens, whose applications must be accompanied in each case by the requisite project study prepared in accordance with the form prescribed for the purpose by the Commission and approved by the National Economic Council and a sworn statement as to whether the applicant has already been granted any previous application and procurement order and the value of the reparations goods and/or services involved and actually delivered, and who will themselves utilize such goods and/or services as bona fide producers or manufacturers: Provided, That the value of goods and services procured for non-revenue producing government projects shall not exceed ten per cent of the value of the annual reparations schedules: Provided, further, That the government shall not procure or utilize reparations goods for the purpose of entering into business in competition with private industries, where such industries have shown their capacity and readiness to serve the public fairly and adequately: Provided, further, That reparations intended for electrification, educational material, equipment and machinery, including those for fishery and vocational schools, cottage industries, fire-fighting equipment, telecommunications, railroad, base metal mining, steel and cement manufacturing, logging and shipping shall be given top priority. The list of projects shall be given the widest dissemination and publicity possible."

SEC. 2. Between paragraphs (a) and (b), between paragraphs (b) and (c), and after paragraph (f) of Section two of the same Act, there are hereby inserted paragraphs (a-1), (b-1), and (g) and (h), respectively, to read as follows:

"(a-1) All applications for reparations shall be accompanied by project studies with an evaluation report on the estimated cost of the project together with a detailed breakdown thereof based on the specifications. The evaluation report and its supporting documents shall be made under oath certifying to the genuineness of the information, data, figures, or other evidences submitted.

"(b-2) An evaluation report under oath on the estimated cost of the consumer goods shall accompany every application for goods other than capital goods.

"(g) Any provision of law to the contrary notwithstanding, the government shall, in the purchase of supplies, equipment and materials, other things being equal, give preference to supplies, equipment and materials made, produced and manufactured out of capital goods obtained from reparations.

"(h) Size of the tentative schedule.—Effective July twenty-three, nineteen hundred sixty-two, the value of the tentative schedule, including any and all additional projects, to be submitted to the Japanese Government, and any and all changes therein, whether by way of addition, substitution, or deletion, whether in kind, quantity, or value, whether partial or total, whether made before or after the conclusion of the agreed schedule, as may be authorized pursuant to this Act, shall not in any case exceed the total of (1) the funds available for the corresponding reparations year and (2) one-half of the funds available for one reparations years, as certified by the Chief of the Philippine Reparations Mission: Provided, That no item which can be manufactured in a single year shall be spread out in more than one year's schedule."

SEC. 3. Paragraphs (d) and (e) of Section two of the same Act, as amended, are further amended to read as follows:

"(d) Cash payment.—The twenty million dollars cash payment shall accrue to a Trust fund to be used exclusively for the benefit and rehabilitation of veterans of the Philippines in World War II, and their widows and orphans, as Congress may from time to time provide: Provided, That the procurement of consumers goods intended for veterans, their orphans and widows, of World War II shall be undertaken by the Reparations Mission upon the recommendation of and in consultation with the NAMARCO, and the same shall be disposed by the latter and the proceeds thereof shall be deposited in accordance with the provisions of this section. There shall be advanced from the Special Economic Development Fund created in Section three of this Act such amounts as may be needed to complete the scheduled cash payments of four million United States dollars every year for a period of five years in such a manner that the total cash payments of twenty million United States dollars shall have been collected at the end of five years.

"(e) Private sector preferred.—In general, preference in the procurement of reparations goods and services shall be given to private productive projects: Provided, That during the first year of the effectivity of the Agreement all reparations goods and services which may be procured shall be earmarked exclusively for government projects, and, thereafter, government projects shall be given preference only if they concern electrification, educational material equipment and machineries, cottage industries, fire-fighting equipment, telecommunication or railroad or would foster the growth of private productive capacity, or are needed in the performance of essential public services, or involve productive projects which private enterprise is not yet capable or desirous of developing but which are urgently necessary in the interest of over-all national economic growth and only when there are appropriations providing for their procurement already embodied in existing law: Provided, further, That where goods are procurable under the Agreement in sufficient quantities, no dollar allocation shall be made, nor any bond, debenture, or bond issues be floated for the importation of such goods for use in any government projects: Provided, further, That not more than sixty per cent of the total value of the reparations to be paid by Japan during the twenty-year period shall be allocated to the private sector: Provided, further, That no private person, private company, establishment, or entity shall be granted more than one application for reparations goods and services and in no case the aggregate total of reparations goods and services granted to any such private person, private company, establishment, or entity shall be more than one and a half million dollars, except when a greater amount is necessary for the realization of any project certified by the President of the Philippines after consultation with the National Economic Council to be vital to the economic development of the country and except further that the applicant may further apply for expansion or development purposes when so authorized by the President of the Philippines after consultation with the National Economic Council: Provided, further, That if the private sector does not or cannot make full use of its allocation, then the portion not so used shall be made available to the government: Provided, finally, That where there are two applicants for the same reparations goods, all other things being equal, the person who first applied shall be given preference."

SEC. 4. Section three of the same Act is amended to read as follows:

"SEC. 3. Special Economic Development Fund.—The proceeds from the sale of reparations goods and utilization of services (excluding the sum referred to in Section two, paragraph (d) hereof), together with

interests earned, shall be constituted into a Special Economic Development Fund, out of which Congress may appropriate by special laws, from time to time, such amounts as may be necessary to constitute a Special Trust Fund which shall be available to the Development Bank, of the Philippines and the Philippine National Bank for loans for economic and industrial development projects as well as for construction, reconstruction, repair and/or improvement of public school buildings in amounts not exceeding eighty per cent of the value of the securities and payable within a period not exceeding twenty years depending upon the kind of the loan and with interest at a rate not exceeding four per cent per annum: Provided, That the Development Bank of the Philippines and the Philippine National Bank shall charge for their services only the actual cost thereof and shall not make any profit therefrom: Provided, further, That fifty per cent of such Special Trust Fund shall be available for industrial loans, thirty per cent for agricultural loans (but not more than twenty per cent of such agricultural loans may be granted on any single agricultural crop), and the remaining twenty per cent, which shall be given top priority, for public school building construction, reconstruction, repair and/or improvement, as Congress may provide from time to time. The sum of twenty million pesos shall likewise be set aside from the said Special Economic Development Fund to constitute a revolving fund which shall be used exclusively to aid in the establishment of rural banks, subject to the provisions of Republic Act Numbered Seven hundred twenty, otherwise known as the 'Rural Banks Act' as amended, and the further sum of fifty million pesos for the purchase of landed estates as provided for in the Land Tenure Act and such other landed estates as provided for by other special Acts."

SEC. 5. Paragraphs (a), (b), (c), and (e) of Section five of the same Act, as amended, are hereby further amended to read as follows:

"SEC. 5. The implementing machinery.— (a) For the purpose of implementing the provisions of this Act, the Reparations Agreement, and the exchange of notes on reparations loans, there is hereby created the Reparations Commission, hereinafter referred to as the Commission, which shall be composed of a Chairman and four other members, at least one of whom shall belong to the minority party whose presidential candidate obtained the second largest number of votes in the presidential election immediately preceding his appointment, to be appointed by the President of the Philippines, with the consent of the Commission on Appointments, who shall serve until removed for cause or by reason of death or disability. The Chairman shall receive a salary of eighteen thousand pesos per annum, and the other members, fifteen thousand pesos per annum each. All decisions of the Commission shall be by majority vote.

"(b) Subject to the provisions of the Reparations Agreement, there is hereby also created a Mission in Japan, hereinafter referred to as the Mission. The Chief of Mission and the senior officials thereof shall be appointed by the President of the Philippines with the consent of the Commission on Appointments. The Chief of Mission shall receive a compensation of twelve thousand pesos per annum and shall be a career minister of the Philippine Foreign Service. The compensation and corresponding diplomatic ranks of the senior officials shall be determined and fixed by the President of the Philippines. The Chief of the Legal Section of the Mission shall be appointed by the President of the Philippines with the consent of the Commission on Appointments, and his compensation shall be fixed by the President of the Philippines, but he shall not be accorded any diplomatic rank or status.

"(c) All subordinate officials and employees of the Commission shall be appointed, and their compensations fixed, by the Commission. All subordinate officials and employees of the Mission shall be appointed by the Chief of Mission and their compensations fixed by the Commission upon recommendation of the Chief of Mission. All subordinate officials and employees of both the Commission and the Mission, except those whose positions are policy determining, primarily confidential or highly technical in nature shall be subject to the Civil Service Law: Provided, That their compensations and positions shall be exempt from standardization and classification by the Wage and Position Classification Office (WAPCO).

"(e) The officials and employees of the Mission shall be granted allowances and benefits similar to those granted members of the foreign service of equal or similar rank, pursuant to the provisions of the Foreign

Service Act, with the Chief of the Philippine Reparations Mission enjoying allowances and benefits equal to that of Chief of Mission. The Chief and the two senior officials shall be entitled to commutable transportation allowance of two hundred pesos a month and representation allowance in an amount not exceeding two hundred pesos a month."

SEC. 6. Paragraph (e-1), Section five of the same Act is repealed.

SEC. 7. Section six, except paragraphs (b), (c), (e), (f), (g), (h), (i), of the same Act is hereby amended to read as follows:

"SEC. 6. Powers, functions and duties of the Commission.—The Commission shall administer the acquisition, utilization and distribution of the reparations goods and/or services subject to the provisions of the Reparations Agreement and this Act. In line with the overall economic program and the policy set in this Act, the Commission shall prepare and submit for the approval of the President of the Philippines, upon recommendation of the National Economic Council, (a) a five-year reparations program to be revised yearly as conditions warrant, consisting of a bread list of eligible projects, which shall be strictly priority-rated from the first to the last item in accordance with the system of priorities established by the National Economic Council, of which the first year shall be made as firm as possible and in sufficient detail to form the preliminary basis for the schedule of goods and services called for in Article four of the Reparations Agreement: Provided, That in the reparations program to be adopted priority shall be given to projects already approved by the Commission and already included in the schedule agreed upon between the Philippine and the Japanese Governments and for which procurement orders have already been issued to the end that complete and full payments shall be effected on such projects which have been given priority by the National Economic Council before procurement orders for new projects shall have been issued by the Commission: Provided, further, That no project shall be included in the tentative schedule unless it has previously been priority-rated as part of the five-year reparations program: Provided, further, That the priority rating of the projects in such a program shall determine and control the order or priority of each project in the tentative and agreed schedule which order may not be altered without prior notice to and approval of the corresponding change or amendment by the National Economic Council and the President, and it shall be mandatory on the Reparations Commission to furnish the National Economic Council such information as will enable the National Economic Council to implement this proviso; (b) the amount, extent, and conditions including the terms of payment under which reparations shall be procured, distributed and utilized: (c) the rules and regulations to be followed in administering the procurement, distribution, and utilization of reparations, including the procedure and forms of application thereof. Such reparations program, conditions of procurement, distribution and utilization, and rules and regulations governing the administration, distribution and utilization of reparations shall be duly published once a week for three consecutive weeks, in two newspapers, one in Tagalog and another in English, of general circulation in the Philippines: Provided, however, That the Commission may submit proposed amendments to the rules and regulations, the reparations program and the yearly schedule, as circumstances in the future may require for approval of the President of the Philippines, upon recommendation by the National Economic Council.

"In addition, the Commission shall have the following specific powers, functions and duties:

"(a) To prepare sufficiently in advance of need, on the basis of the previously approved reparations program and approved applications for reparations goods and services, a tentative schedule of goods and services clearly indicating thereon the name of the applicant end-user and the amount allocated for each project to be procured from Japan every year which, when approved by the President of the Philippines upon recommendation of the National Economic Council, shall form the basis of consultation between the Philippine and Japanese governments towards the formulation of the schedule called for in Article four of the Reparations Agreement. A copy each, duly certified by the Commission, of the approved applications and studies of the projects included in the tentative schedule shall be transmitted to the Mission together with the tentative schedule. No additional project, and no change involving any item or project in a tentative or agreed

schedule, whether by addition, substitution or deletion, whether in kind, quantity, or value, whether partial or total, shall be submitted to the Japanese Government until the same has been endorsed by the National Economic Council and approved by the President in accordance with the foregoing, except in cases where the proposed change involves only the increase or decrease in the amount allocated for a specific item or project listed in the tentative or agreed schedule, and does not involve any addition of, or change in, any other item or project as provided above, and the total of such increase or decrease, whether effected at one time or several times, does not exceed ten per cent of the amount originally allocated for the corresponding item or project in the tentative schedule: Provided, That in any case, any increase or decrease in allocation must be within the limits set forth in paragraph (g) of Section Two of this Act. The agreed schedule, and any addition, substitution or deletion hereinabove referred to, as. may thereafter be made in accordance with this Act and agreed to by the Japanese Government, shall, after its conclusion with the Japanese Government, be immediately published in full, indicating clearly the name of the end-users concerned, for three consecutive times every other day in two newspapers of general circulation, one in Tagalog and one in English by the Commission in the Philippines, and both in English by the Philippine Reparations Mission in Japan.

(a-l) To issue procurement orders for the acquisition of reparations goods and/or services on the basis of the agreed schedule. The procurement order shall specify, among others, the following: (1) the name of the applicant end-user; (2) the item in the agreed schedule; (3) the name of the project; (4) the amount of the procurement order; and (5) the date of issuance of the procurement order. The amount of each procurement order shall be strictly in accordance with the allocation for each project as agreed upon between the Philippine and Japanese Governments. The procurement orders for all the projects shall be issued only after the conclusion of the agreed schedule but in no case later than forty-five days thereafter. No procurement order for the acquisition of goods and/or services intended for government agencies shall be issued by the Commission until after it shall have duly ascertained and verified that the agencies concerned have (1) the capacity and have duly provided for the repayment of the goods and/or services, in the event that such agencies are required to pay for same, and (2) the technical capacity to take delivery and utilize efficiently the goods applied for, and unless all the following conditions shall have been previously complied with: (1) the government agency concerned must have previously prepared and submitted to the satisfaction of the Commission a financial, economic and technological study concerning the feasibility of the project together with the complete plans and specifications thereof; (2) the application must have been previously approved by resolution of the Commission; (3) the project must be among those specifically included in the reparations schedule agreed upon and effective between the Philippine and Japanese Governments at the time of the issuance of the procurement order; and (4) the agreed schedule showing the names of the applicant end-users must have been published in accordance with this Act. No procurement order for the acquisition of reparations goods and/or services intended for private parties shall be issued by the Commission until after it shall have duly ascertained and verified that the applicant concerned (1) has enough financial resources and capacity to pay, and (2) has the technical capacity to take delivery and utilize efficiently the goods applied for, and unless all the following conditions shall have been previously complied with: (1) the private applicant end-user concerned must have previously prepared and submitted to the satisfaction of the Commission a financial, economic and technological study of the project together with the complete plans and specifications thereof favorably endorsed as prescribed in Section two of this Act, and a certification from the Securities and Exchange Commission or the Bureau of Commerce, as the case may be, attesting that the applicant end-user concerned is qualified under this Act; (2) the application must have been previously approved by resolution of the Commission, (3) the project concerned must be among those specifically included in the reparations schedule agreed upon and effective between the Philippine and Japanese Governments at the time of issuance of the procurement order: Provided, That no procurement order shall be issued until after the private applicant end-user concerned shall have made a down payment for the project applied for which shall not be less than two-per cent of the value of the project if it does not exceed fifty thousand pesos and five per cent if the value of the project exceeds fifty thousand pesos; and (4) the agreed schedule showing the names of the applicant end-users must have been published in accordance with this Act. The private applicant shall be required to

submit proof to substantiate that both his financial resources and capacity to pay are commensurate with the value of the goods and/or services applied for, and that he has had experience or has contracted an appropriate number of experts in the particular field. Notwithstanding the foregoing, no procurement order shall take effect until after the lapse of one week after its final publication indicating the name and address of the applicant end-user, the name of the project subject of the procurement order, and the specific item in the reparations schedule agreed upon and effective between the Philippine and Japanese Governments at the time of issuance of the procurement order, three successive times every other day in two newspapers of general circulation, one in Tagalog and one in English, in the Philippines, and both in English in Japan, by the Commission and the Mission, respectively. As required herein, the Commission shall publish each and every procurement order within one week after its issuance, and the Mission, within one week after receipt of the procurement order. Any procurement order which does not wholly comply with all of the above requirements shall ipso facto be considered null and void, if such non-compliance has been through the fault or negligence of the applicant end-user. After the procurement order for reparations intended for a specific end-user has been properly issued in accordance with the foregoing, such procurement order may not be revoked or suspended except when the end-user in whose favor the procurement order has been issued as adjudged, after due investigation wherein he has been given the opportunity to be heard and represented by counsel, to be disqualified or found guilty of fraud in connection with his application under this Act: Provided, That pending final decision, the procurement of the goods, except actual delivery thereof to the end-user concerned, shall not be suspended: Provided, however, That an end-user who has been found disqualified by the Commission may appeal to the President within thirty days from the receipt of the Commission's decision. The decision of the President which must be made not later than thirty days after the submission of the appeal to him, shall be final, and shall become effective upon receipt thereof by the end-user concerned. In case the end-user fails to appeal, the decision of the Commission shall become final immediately after the lapse of the period for appeal. A party who has been adjudged disqualified shall forfeit the down payment without prejudice to any action, criminal or otherwise, which may be taken against him by the proper government agency. The Commission is hereby required to render a decision on any complaint submitted to it regarding the qualifications of an end-user within ninety days from the date of the formal submission of such complaint in writing.

"(d) To provide for the care, custody, protection and proper delivery to end-users of all such reparations goods as provided in this Act. In the performance of this function, the Commission and the Mission together shall endeavor to have the end-user inspect the goods with the assistance, of a reputable establishment engaged in marine cargo survey and superintendence doing business in the Philippines, the cost for whose services shall form part of the value of the goods procured, accept them, and provide for their expeditious shipment from Japan to the point of installation in the Philippines in order to minimize, if not altogether eliminate, storage costs, extra handling costs, deterioration and damage in transit.

"(h-1) To utilize such portion of the annual reparations payments from Japan corresponding to the government sector as may be necessary to guarantee repayment of the loans extended by any Japanese financial institution or institutions for the financing of the Marikina River Multipurpose, the telecommunications, and railroad expansion and improvement projects as may be agreed upon between the Government of the Republic of the Philippines and the Government of Japan: Provided, That the authority provided in this paragraph shall be exercised only to guarantee loans authorized by law: Provided, further, That procurement of goods under said loans shall be in the manner provided for in the procurement of any reparations goods by any government agency as provided for in this Act, any provision of Republic Act Numbered Two thousand six hundred twelve to the contrary notwithstanding."

SEC. 8. Paragraphs (a), (b) and (d) of Section seven of the same Act are hereby amended to read as follows:

"(a) To negotiate and conclude with the Japanese Government the agreed annual schedule on the basis and within the limits of the tentative annual schedule of goods and services prepared by the Commission. The Mission shall not negotiate with the Japanese Government for the inclusion of any item or project in the annual

reparations schedule unless (1) it has previously received a copy each of the application therefor and the required project study duly certified by the Commission, and (2) the item or project is included in the tentative schedule, both duly approved in accordance with this Act.

"(b) To conclude, on behalf of the Philippine Government, contracts directly with any Japanese national or any Japanese entity controlled by Japanese nationals in order to procure the desired goods and/or services. The Mission shall procure goods and services on the basis of the agreed schedule and the procurement order received from the Commission. The Mission shall prepare proposed contracts only after all the requirements specified in this Act shall have been complied with. The amount of the contract for each project shall not in any case exceed the amount specified in the corresponding procurement order.

"No official or employee of the Government of the Philippines or of any of its subdivisions or instrumentalities, including government-owned or controlled corporations, shall intervene in any manner whatsoever in procurement or reparations goods and/or services or in negotiating or concluding reparations contracts with any Japanese national or entity unless such intervention is in connection with an application from the government sector and is expressly requested by the Mission with the approval of the President.

"In procuring goods and services from any Japanese national or entity, whether through public bidding or negotiated sale, the Mission shall in no case entertain any bid nor negotiate any sale with any Japanese national or entity who had once been discovered in any previous contract with the Mission to have unduly overpriced goods or delivered goods of inferior quality or not according to the agreed specification or unreasonably delayed delivery of goods or for any similar reason.

"(d) To conduct public bidding or to procure directly from specific manufacturers, producers, or suppliers concerned as provided herein. With respect to the procurement order both of Philippine Government offices, agencies and instrumentalities, including government-owned or controlled corporations, and/or private parties no award shall be made by the Mission except after a public bidding with sealed bid: Provided, That where the bids are unsatisfactory, as when the goods are unduly overpriced, or of inferior quality, or when the suppliers combine to defeat the purpose of public bidding, or for any other like reason the Mission may conduct another public bidding or procure the goods by negotiated sale: Provided, further, That when no bid is submitted after two consecutive invitations to bid are issued for the same goods with an interval of not less than thirty days, the Mission may, with the approval of the Commission, procure the goods by negotiated, sale, for the purpose of protecting the interest of the government. The Mission shall publish invitations to bid in three newspapers of general circulation in Japan every other day for three consecutive times: Provided, That the specifications and descriptions of the goods for which bids are called shall be sufficiently general to permit more than one supplier and/or manufacturer to bid, and that the bidding shall be held not earlier than fifteen days after the last publication. The Mission shall endeavor to procure the goods directly from the manufacturers, producers, or through their duly authorized representatives."

SEC. 9. Section ten of the same Act, as amended, is hereby further amended to read as follows:

"SEC. 10. Operating Funds.—The funds for the approved budget of the Commission shall be provided for in the annual General Appropriation Acts. The Commission is empowered to impose a service fee not greater than two per cent on all transactions except those where the reparations goods and/or services are used for government non-revenue producing projects. For its initial operating fund, the Commission is hereby authorized to obtain from the Central Bank temporary advances not exceeding a total sum of one million pesos, which shall be reimbursed out of the proceeds from reparations."

SEC. 10. Section eleven of the same Act is amended to read as follows:

"SEC. 11. Terms of procurement.—As a general rule, reparations goods shall be procured on an f.o.b. (free-onboard) Japanese port basis: Provided, That the Mission may, if circumstances so warrant, procure such goods on c. and f. (cost and freight) Philippine port, ex-factory or c.i.f. (cost, insurance and freight) Philippine

port basis, in which case the suppliers shall be required to quote separately expenses for freight. When reparations goods shall be paid on installments, only the f.o.b. cost thereof, exclusive of the insurance, ocean freight and other expenses incident to importation shall be considered in computing the amount of the installments. The insurance shall be obtained from domestic insurance companies wholly owned by Filipino citizens: Provided, That upon delivery of reparations goods, whether partial or complete, pursuant to contract, to the end-user, whether a government agency or a private person or entity, the end-user shall insure at his expense said goods, or parts thereof or attachment thereto, against loss or damage due to any and/or all causes, including but not limited to war, theft, robbery, unauthorized dismantling, with the Government Service Insurance System pursuant to the provisions of Republic Act Numbered Six hundred fifty-six, or with any private domestic insurance company, eighty per cent of the capital of which is owned by Filipino citizens and the management of which is vested in such citizens, the policy to be endorsed in favor of the Commission to the extent of its insurable interest, for as long as the government has any insurable interest on such goods. The insurance, ocean freight and other expenses incident to importation shall be paid by the end-user in accordance with usual business practices. As much as Japan to the transportation of reparations goods from Japan to the Philippines, carriers of Philippine registry shall be preferred. The inspection and testing of reparations goods, whether intended for the government or for the private sector, shall be undertaken only by agencies specifically designated by the Philippine Government through the Mission: Provided, That preference shall be given to Philippine registered and internationally recognized inspection and testing firms. Nothing herein shall be construed as exempting the end-user from paying in full all the necessary costs, charges and expenses incident to the application for and the procurement, production, delivery and acquisition of the goods concerned."

SEC. 11. The first paragraph of Section twelve of the same Act is amended as follows:

"SEC. 12. Terms of Sale.—Capital goods and complimentary services intended for non-revenue producing government projects or for projects intended for public benefit and welfare shall be transferred to the agencies concerned without cost, and those intended for revenue producing government projects at procurement cost, the incidental expenses being payable in cash by the end-user before delivery. Capital goods and complementary services disposed of to private parties as provided for in subsection (a) of Section two hereof shall be sold on cash or credit basis under rules and regulations as may be determined by the Commission. Sales on credit basis shall be payable on installments: Provided, That in case of capital goods for the utilization of which an initial investment before operation of not more than twenty per cent of the cost of such goods is required, the first installment shall be paid on the third month after complete delivery of the goods, and in the case of capital goods for the utilization of which an initial investment before operation of more than twenty per cent of the cost of such goods is required, and also in the case of ocean-going vessels, the first installment shall be paid on the twelfth month after complete delivery of the goods, extendible when deemed to be justified by the Commission not exceeding one year. The balance, in both cases, shall be paid in equal annual installments with interest at three per cent per annum within a period to be fixed by the Commission after considering the economic life expectancy of the goods but in no case exceeding ten years from the date the first installment falls due: Provided, That in the case of vessels, the procurement cost thereof shall be paid within the period provided for in Republic Act Numbered Fourteen hundred and seven. The Commission may provide for the payment of additional interests at the rate not exceeding three per cent per annum for delinquency in the payment of installments. Goods other than capital goods procured as reparations shall be sold for cash only at prevailing prices for similar goods.

"In all transactions involving the transfer of capital goods and/ services from reparations to the authorized private parties specified in this Act, the sale shall be directly to end-users and not through middlemen. The contract of the sale shall bear the conditions that no capital goods thus acquired shall be resold, leased or in any other manner disposed of except to Filipino citizens or to entities wholly owned by Filipino citizens who shall continue the utilization thereof in the projects for which the goods were originally intended or in similar projects included in the economic development program of a similar priority, subject, however, to the further condition that groups, associations and corporations which are recipient of such goods shall not permit any

subsequent change in ownership or control as shall at any time thereafter change the control or ownership wholly held therein by Filipino citizens. It shall further contain a provision that any transfer of ownership, whether by virtue of a private contract or through court proceedings, shall be to Filipino citizens or entities wholly owned by Filipino citizens who shall begin utilizing them in such projects as the National Economic Council shall determine within one year from notice of the Council's decision."

SEC. 12. The same Act is amended by inserting between Sections twelve and thirteen a new section to be known -as Section 12-A, to read as follows:

"SEC. 12-A. Performance Bond.—Before delivery of the reparations goods, the private end-user shall file a performance bond in favor of the Commission in an amount equivalent to ten per cent of the f.o.b. cost, or in lieu thereof, it shall be sufficient if the private end-user shall execute in favor of the Commission a guaranty secured by real estate or any other property acceptable to the Commission in an amount equivalent to ten per cent of the total f.o.b. Cost, Japanese port, of the capital goods to be delivered to end-user. The conditions of said bond shall be as prescribed by the rules and regulations of the Commission.

SEC. 13. Section thirteen of the same Act is hereby amended by adding a new paragraph to read as follows:

"The Commission shall include in the contract between the Mission and the Japanese supplier the following provision: that the supplier agrees to allow the Auditor General or his duly authorized representative to have access to and examine any directly pertinent books, documents, papers and records of the supplier involving transactions related to this contract within three years from the time of final payment."

SEC. 14. Section fourteen of the same Act is amended to read as follows:

"SEC. 14. Exemption from tax.—All reparations goods obtained by the government shall be exempt from the payment of all duties, fees and taxes. Reparations goods obtained by private parties shall be exempt from the payment of customs duties, compensating tax, consular fees and the special import tax."

SEC. 15. Between Section fifteen and sixteen of the same Act, there is hereby inserted a new section to read as follows:

"SEC. 15-A. Foreign, Exchange Requirements.—Every application for reparations shall specify the foreign exchange requirements, if any, of the project in terms of the goods and/or services which can not be procured as reparations under the reparations agreement. No application shall be approved until after all foreign exchange requirements of the project shall have been ascertained and shown in the project study and a certificate of the Central Bank secured attesting to the availability, when and as required, of the required foreign exchange for the project."

SEC. 16. Paragraphs (a) and (b) of Section nineteen of the same Act are amended to read as follows:

SEC. 19. Violations and Penalties.—

(a) Any person who fails to utilize any capital goods acquired from the Commission for the purpose for which they were intended within a period of twenty-four months after actual complete physical delivery, or does not continue to utilize the same without any reasonable cause as long as they are serviceable after having started operations, shall be subject to a fine of five per cent of the value of such goods for every year of default or fraction thereof and to imprisonment for not less than five years nor more than ten years. In addition thereto, the goods, as well as the payments already made thereon, shall be subject to confiscation and forfeiture to the government.

" (b) Any person who does not utilize the services of any technician within one month after his arrival in the Philippines, or who utilizes his services, whether partly or wholly, for any purpose other than that for which he was allowed entry, shall be punished by a fine of not less than five thousand pesos nor more than ten thousand

pesos and by imprisonment for not less than five years nor more than ten years, and the technician concerned shall be subject to immediate deportation, and in addition thereto, whatever payments already made for such service shall be deemed forfeited to the government."

SEC. 17. Section nineteen of the same Act is hereby amended by inserting between paragraphs (a) and (b), and (b) and (c) thereof two new paragraphs to read respectively as follows:

"(a-1). The government officials charged with the proper utilization of reparations goods acquired for the use of the government sector shall suffer the same penalties provided for in paragraph (a) for private persons who fail to utilize any capital goods acquired from the Commission for the purpose for which they were intended.

"If the failure to utilize can be attributed to any legitimate reason, the official shall be exempt from said penalty, but should the failure to utilize reparations goods for the government sector be attributed to the culpable neglect of the officials, technical advisers, or both, responsible for the procurement of same, the latter shall bear the responsibility and suffer the penalty.

"(b-1). Failure by the end-user to take delivery of the goods allocated at the time and place designated by the Commission pursuant to its regulations shall be punished by confiscation of the down payment, a fine of two per cent of the whole value of the project and, in addition, the end-user shall thenceforth be barred from applying for reparations: Provided, That the imposition of such fine and penalty shall be without prejudice on the part of the Commission to require the end-user transferee concerned to pay all charges in connection with the project which are chargeable against the original end-user. In addition thereto the Commission shall have the right to immediately transfer the project to any other qualified end-user under the same terms and conditions."

SEC. 18. Paragraphs (c) and (d) of Section nineteen of the same Act are hereby amended to read as follows:

"(c) It shall be unlawful for any member of the Commission or Mission, or for any employee, agent, or clerk of the Commission or Mission, to divulge, or to make known in any manner whatsoever not provided for by law, to any person, the trade secrets, or processes of any person, firm, copartnership, corporation, or association embraced in any examination or investigation conducted by the Commission or by order of the Commission or by order of any member thereof; Provided, however, That the Commission or Mission may make reasonable use of the specifications furnished by, end-users for the purpose of canvassing current prices to determine whether the prices offered by manufacturers or suppliers are reasonable and not excessive. Any offense against this provision shall be penalized by dismissal from the service with prejudice to reinstatement, subject to whatever action the aggrieved part may take against the offender.

"(d) Any person violating or aiding or abetting the violation of any provision of this Act or any of the rules and regulations issued pursuant to the provisions of this Act in any other manner shall be punished by a fine of not less than four thousand pesos nor more than eight thousand pesos and/or imprisonment of not less than four nor more than eight years with the subsidiary imprisonment in case of insolvency, and if the guilty party were an appointive officer or employee, he shall, in addition, be dismissed from the service with prejudice to appointment to any public office. If the violation is committed by the Commission or the Mission or by any of its members, the member or members thereof who have committed the violation shall be held responsible and punished with double the penalty hereinabove provided.

"In all cases, the guilty parties shall, in addition, be disqualified from subsequently applying for and/or utilizing any reparations or loans, whether in the form of goods or services, or the proceeds from the sale of reparations goods or the utilization of services."

SEC. 19. Section twenty of the same Act is amended to read as follows:

"SEC. 20. Anti-dummy.—In all cases in which any provision of this Act requires Philippine or any other

specific citizenship as a requisite for the exercise or enjoyment or right, franchise, privilege, reparations goods, machinery, equipment or .services, of whatever nature, any citizen of the Philippines or of 'any other specific country who allows his name or citizenship to be used for the purpose of evading such provision, and any alien or foreigner profiting thereby, shall be punished by imprisonment of not less than ten nor more than twenty years, and by a fine of not less than the value of the right, franchise, privilege, reparations goods, machinery, equipment or services, which is enjoyed or acquired in violation of the provisions hereof but in no case less than ten thousand pesos. In all cases of violations hereof, the pertinent provisions of Commonwealth Act Numbered One hundred eight, as amended by Republic Act Numbered One .hundred thirty-four and Republic Act Numbered Eleven hundred thirty, whenever applicable, are hereby extended thereto."

SEC 20. This Act shall take effect upon its approval, except that the amendment contained in Section seven hereof relating to the requirements for procurement orders including the requirement of down payment by private applicant end-users shall not apply to procurement orders already duly issued and verified at the time of the passage of this amendatory Act, and except further that the amendment contained in Section ten relating to the insurance of the reparations goods by the end-users upon delivery shall apply also to goods covered by contracts already entered into by the Commission and the end-user prior to the approval of this amendatory Act as well as goods already delivered to the end-user, and except further that the amendments contained in Sections eleven and twelve hereof relating to the terms of installment payments on capital goods disposed of to private parties, and the execution of a performance bond before delivery of reparations goods, shall not apply to contracts for the utilization of reparations goods already entered into by the Commission and the end-users prior to the approval of this amendatory Act: Provided, That any end-user may apply for the renovation of his utilization contract with the Commission in order to avail of any provision of this amendatory Act which is more favorable to an applicant end-user than has heretofore been granted in like manner and to the same extent as an end-user filing his application after the approval of this amendatory Act, and the Commission may agree to such renovation on condition that the end-user shall voluntarily assume all the new obligations provided for in this amendatory Act.

Approved, June 17, 1961.

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