

**REPUBLIC OF THE PHILIPPINES
BOARD OF INVESTMENTS**

DTI-BOI ADMINISTRATIVE ORDER NO. 01, Series of 2018

**IMPLEMENTING RULES AND REGULATIONS OF EXECUTIVE ORDER NO. 57,
ENTITLED “REDUCING THE RATES OF DUTY ON CAPITAL EQUIPMENT, SPARE
PARTS AND ACCESSORIES IMPORTED BY BOARD OF INVESTMENTS –
REGISTERED NEW AND EXPANDING ENTERPRISES”**

Pursuant to Section 4 of the Executive Order No. 57, the following rules and regulations are hereby promulgated.

RULE I. DEFINITION OF TERMS

Section 1. For purposes of this rules and regulations, the following definitions shall apply:

- (a) “*Board*” or “*BOI*” shall refer to the Board of Investments.
- (b) “*E.O.*” shall refer to Executive Order No. 57.
- (c) “*Capital Equipment*” shall refer to machinery, equipment, major components thereof, tools, devices, apparatus, which are directly and/or reasonably needed in the registered operation of the enterprise.
- (d) “*Spare Parts*” shall mean the usual components of the capital equipment, which are subject to normal wear and tear arising from use, utilization and operation.
- (e) “*Accessories*” shall mean any article, other than capital equipment and spare parts, designed to be used in connection with the capital equipment.
- (f) “*ASEAN Harmonized Tariff Nomenclature (AHTN)*” shall be an 8-digit commodity nomenclature and coding system agreed to be adopted by the ASEAN member countries. The AHTN shall be used as the basis for determining the specific tariff lines for the capital equipment, spare parts and accessories imported by virtue of the E.O.
- (g) “*New Registered Enterprises*” shall refer to enterprises with registered new project.
- (h) “*Expanding Registered Enterprises*” shall refer to enterprises with registered expansion project. For this purpose, enterprises with registered projects under modernization or rehabilitation shall be considered expanding enterprises.
- (i) “*Date of Acquisition*” shall refer to date of the capital equipment, spare parts or accessories were loaded as reflected in the bill of lading date.

**RULE II. IMPORTATION OF CAPITAL EQUIPMENT, SPARE PARTS AND
ACCESSORIES**

Section 2. *Qualified Activities* – The activities listed under the Investment Priorities Plan (IPP) prepared by the BOI every three (3) years and duly approved by the President that is in force during the effectivity of the E.O. are qualified under this Rules.

Section 3. *Qualified Enterprises* – Enterprises registered with the BOI starting the year 2013, of good standing, with project/s qualified as new or expanding under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, may import, at zero percent (0%) duty, capital equipment, spare parts and accessories classified under AHTN

chapters 40, 59, 68, 69, 70, 73, 76, 82, 83, 84, 85, 86, 87, 89, 90 and 96 of Section 1611 of the Customs Modernization and Tariff Act (CMTA), as listed in the Annex of this Implementing Rules and Regulations (IRR).

Section 4. Conditions for availment of duty free importation. Qualified enterprises may import capital equipment, spare parts and accessories subject to the duty stated in the preceding section, provided that the following conditions are met:

- (a) The capital equipment, spare parts and accessories to be imported are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices.

Capital equipment, spare parts and accessories shall not be considered available in sufficient quantity if they cannot be made available to the qualified enterprises at the time needed or within a reasonable period.

In determining whether quality is comparable, the test, among others, will be whether or not the registered operation will be adversely affected or the resulting product will be of lower quality or the cost of operation will be increased.

In determining reasonableness of the prices quoted by the domestic manufacturers, the BOI may be guided by the import cost of such capital equipment, spare parts and accessories to be imported into the Philippines, plus all applicable taxes and duties to be paid thereon, and a fifteen percent (15%) mark-up;

- (b) They are reasonably needed and will be used exclusively by the qualified enterprise in its registered activity;
- (c) The approval of the BOI was obtained by the qualified enterprise for the importation of such capital equipment, spare parts and accessories before the shipment will be released by the Bureau of Customs (BOC). Further, the application for importation shall be accompanied by a quotation/proforma invoice in the name of the applicant as consignee to whom the shipment will be released; and
- (d) Subject to reasonable allowance, the rated capacity of the capital equipment, spare parts and accessories if applicable, to be imported is within the registered capacity of the qualified enterprise.

Section 5. Certificate of Authority. The qualified enterprise availing of zero percent (0%) duty importation of capital equipment, spare parts and accessories shall submit an application with the BOI. After a thorough evaluation of the application, the BOI shall issue a Certificate of Authority (CA) for importations covered under this E.O. The CA shall include, among others, the registration number and type of registration, date of application and issuance, validity period, quantity and description of the capital equipment, spare parts and accessories to be imported, and the applicable AHTN tariff code.

The BOI shall act on the application within ten (10) working days from its official acceptance. The action of the BOI, whether it be approval or disapproval, shall be communicated in writing to the applicant. A copy of the CA shall be sent to the Office of the Commissioner of BOC.

To ensure proper tariff classification, an applicant may submit an advance ruling issued by the Tariff Commission (TC) on the product/article subject of importation. The BOI may also require an applicant to submit an advance ruling.

Section 6. Import Procedures with the DOF and BOC. For purposes of release of the shipment, the applicant shall submit to the Department of Finance (DOF) official import

documents indicating the description, quantity and price of the capital equipment, spare part or accessories imported, the names of the supplier and carrying vessel and its anticipated or actual date of arrival, together with the CA.

Upon release of the DOF endorsement, the applicant shall file an import entry declaration with the BOC supported by the following documents:

- (1) Commercial Invoice;
- (2) Bill of Lading
- (3) BOI CA; and
- (4) Such other documents as BOC may require pursuant to laws, rules and regulations as may hereinafter be issued.

The Customs Collector shall verify if the importation falls under the chapters provided under the E.O. and record in the Import Report all pertinent data relative thereto.

In case of disparity on the tariff classification by the applicant and inspection of the importation and determination by the BOC, the dispute shall be submitted to TC for appropriate ruling.

If the classification falls under the chapters covered in the E.O., the zero percent (0%) duty rate shall still apply subject to amendment of the CA. If the classification falls outside the chapters of the E.O., the shipment shall be released upon payment under protest of the appropriate duty rates or the posting of a cash bond or surety bond from any BOC accredited surety company equivalent to the duties thereto.

Rulings of the TC on tariff classification shall be binding upon BOC, unless the Secretary of Finance shall rule otherwise.

The BOC shall provide the DOF, TC and BOI quarterly report on the availment of BOI qualified enterprises under this E.O.

Section 7. *Validity of CA.* The CA is non-transferable and shall be valid for a period one (1) year from the date of issuance, unless invalidated or revoked under Rule III of this IRR. Notwithstanding, the period of validity of the CA shall be subject to the effectivity of the E.O.

Provided however, that capital equipment, spare parts or accessories, covered by a CA, which were ordered, as reflected in the date of the purchase order or on the date of the opening of the corresponding letters of credit; or loaded as reflected in the bill of lading date, on or before the expiration of the EO and have arrived after such date but not yet released from customs custody; or are still in transit, shall qualify for the reduced duty rate.

In the event that the CA remained unutilized during its validity period, the applicant shall surrender the Certificate to the BOI within fifteen (15) days from its expiration.

Section 8. *Performance Bond.* The posting of performance bond from the Government Service Insurance System (GSIS), equivalent to the duties waived on the imported capital equipment, spare parts or accessories, shall be a pre-condition to the zero percent (0%) duty importation to qualified enterprises. In lieu of the bond, the BOI may require a guarantee from the principal stockholder(s) or other form of guarantee to ensure performance. In the event of violation of its terms and conditions for importation, the principal stockholder(s) shall be solidarily liable with the corporation.

The BOI may lift the performance bond posted in the following cases: (1) for domestic enterprises, upon installation and utilization of the imported capital equipment for the registered activity and, (2) for export enterprises, after a period of one (1) year of exportation; Provided however, that the BOI may waive the performance bond posted on the

imported capital equipment, spare parts and accessories for qualified enterprises with good track record.

Section 9. *Monitoring of the Imported Capital Equipment, Spare Parts and Accessories.*

- (a) After the capital equipment, spare parts and accessories have been released from the customs' custody, the qualified enterprise shall give written notice thereof to the BOI together with copies of the Import Entry and Internal Revenue Declaration (IEIRD) issued by the BOC and pertinent document within fifteen (15) days from release of shipment, for monitoring and statistical purposes.
- (b) The BOI shall also be informed of the installation date within ten (10) days therefrom. The capital equipment, spare parts and accessories shall be installed and/or used in the site indicated by the applicant and shall not be used or transferred elsewhere, without prior approval of the BOI. The capital equipment shall have an inscription that it is acquired pursuant to the E.O.
- (c) The capital equipment, spare parts and accessories shall, at any reasonable time, be subjected to inspection by the BOI for the purpose of verifying whether it has actually been installed and is being used by the qualified enterprise in its registered activity.
- (d) Any violation of the provision of the E.O., its IRR and terms and conditions shall be meted with the applicable penalty under Executive Order No. 226.

Section 10. *Sale or Disposition of Capital Equipment, Spare Parts and Accessories.* Any sale, transfer, assignment, donation or other form of disposition of capital equipment, spare parts and accessories imported by virtue of the E.O., within five (5) years from the date of acquisition shall require prior approval of the BOI. Such approval shall be granted only if the sale or other form of disposition is made:

- (1) to another qualified enterprise;
- (2) for reason of technical obsolescence as determined by the BOI;
- (3) for purpose of replacement to improve and/or expand the operations of the qualified enterprise;

In the event that the qualified enterprise sells, transfers, or disposes the capital equipment, spare parts or accessories without prior BOI approval within five (5) years from date of acquisition, the qualified enterprise and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of the duties foregone or five hundred thousand pesos (Php 500,000.00), whichever is higher, without prejudice to other applicable penalties under Executive Order No. 226.

In cases of cessation from operations of the qualified enterprise, capital equipment, spare parts and accessories imported under the E.O. shall be subjected to payment of applicable duties and such other conditions as may be prescribed unless otherwise provided by the BOI.

Any sale, transfer, assignment or other form of disposition of capital equipment, spare parts or accessories after five (5) years from date of acquisition shall require notice to the BOI within ten (10) days from the sale, transfer or disposition thereof.

RULE III. VIOLATION

Section 11. Any violation by a qualified enterprise of the provisions of the E.O. shall result in the suspension within the taxable year of all BOI incentives that are available for the particular project. Corresponding penalties shall be meted whenever warranted. The subject imported capital equipment, spare parts and accessories shall be confiscated in favor of the government of the Republic of the Philippines, in the event that the penalties are not paid.

Section 12. The BOI may also impose administrative sanctions such as cancellation or withdrawal of the CA; automatic disapproval of pending and subsequent application for CA; or blacklisting, against these qualified enterprises, after determining in an administrative proceeding that a violation for these IRR has been committed.

RULE IV. EFFECTIVITY AND TRANSITORY PROVISIONS

Section 13. This IRR shall take effect immediately following its complete publication in a newspaper of general circulation and shall be valid for one (1) year from the date of publication of Executive Order No. 57 or until a law amending EO No. 226 is passed, whichever comes earlier.

Section 14. The qualified enterprises with valid CA, whose capital equipment, spare parts or accessories were ordered, as reflected in the date of the purchase order or on the date of the opening of the corresponding letters of credit; or loaded, as reflected in the bill of lading date; or are still in transit on or before the date of the expiration of the E.O. and have arrived after such date but not yet released from customs custody, shall qualify for the reduced duty rate.

Approved, 11 July 2018, Makati, Philippines.

By the Authority of the Board:



DR. CEFERINO S. RODOLFO
Undersecretary and BOI Managing Head