

**JOINT DTI-BOI, DOF, NEDA, BOC ADMINISTRATIVE ORDER No. \_\_\_\_\_  
Series of 2004**

**IMPLEMENTING RULES AND REGULATIONS OF EXECUTIVE ORDER NO.  
313, ENTITLED “MODIFYING THE RATES OF DUTY ON CAPITAL  
EQUIPMENT, SPARE PARTS AND ACCESSORIES IMPORTED BY BOARD  
OF INVESTMENTS (BOI) REGISTERED NEW AND EXPANDING  
ENTERPRISES”**

Pursuant to Section 4 of Executive Order No. 313, 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*” shall refer to the Board of Investments.
- (b) “*E.O.*” shall refer to Executive Order No. 313.
- (c) “*Capital Equipment*” shall refer to machinery, equipment, major components thereof, tools, devices, apparatus, fixtures, fittings, accompaniments which are directly and/or reasonably needed in the registered operation of the enterprise.
- (d) “*Spare Parts*” shall mean the usual component of machinery and /or 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 machinery or equipment or needed in the production of the registered activity.
- (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 machinery, 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 the date the machinery, equipment, spare parts or accessories were loaded as reflected in the bill of lading date.

## **RULE II. IMPORTATION OF CAPITAL EQUIPMENT**

**Section 1. *Qualified Registered Enterprises*** – BOI enterprises registered on or after 06 June 2004, of good standing, with project registered as new or expanding under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, may import machinery, equipment, spare parts and accessories classified under AHTN Chapters 40, 59, 68, 69, 70, 73, 76, 82, 83, 84, 85, 87, 89, 90, 91 and 96 of the Tariff and Customs Code of the Philippines, subject to zero percent (0%) duty for export-oriented enterprises and one percent (1%) duty for domestic-oriented enterprises, except those products/articles covered under the Motor Vehicle Development Program (MVDP).

**Section 2. *Conditions for availment of duty free or reduced duty importation.*** BOI registered enterprises may import machineries, equipment, spare parts and accessories subject to the duties stated in the preceding section provided that the following conditions are met:

- (a) The machinery, equipment, spare parts and accessories to be imported are 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 as certified by the industry association or a local manufacturer.

In determining whether quality is comparable, the test, among others, will be whether or not the registered operation will be adversely affected or will result in poor quality standard or increased cost of operation.

In determining reasonableness of the prices quoted by the domestic manufacturers, the Board may be guided by the acquisition cost of similar machinery, equipment, spare parts and/or accessories imported into the Philippines, if all applicable taxes and duties were paid thereon, plus fifteen percent (15%) mark-up;

- (b) They are reasonably needed and will be used exclusively by the enterprise in its registered activity. The Board may authorize the temporary use of machinery or equipment in a non-registered activity to maximize usage thereof or its permanent use in a non-registered activity, upon payment of the proportionate duties thereon; and

- (c) The approval of the BOI was obtained by the registered enterprise for the importation of such machinery, equipment, spare parts and accessories before the purchase order is made or before the corresponding letters of credit were opened. Advance authority to open letter of credit for the importation of machinery, equipment, spare parts or accessories may be allowed subject to the discretion of the Board taking into account the urgent need and the financial capability of the applicant.
- (d) Subject to reasonable allowance, the rated capacity of the machinery or equipment, if applicable, to be imported is within the registered capacity of the registered enterprise.

**Section 3. Requirements for Authority to Import.** In addition to the conditions set forth in Section 2, the qualified registered enterprise shall submit an application for importation accompanied by a quotation/ proforma invoice in the name of the applicant as consignee to whom the shipment will be released by the Customs authorities before Board approval may be secured for the importation of the machinery, equipment, spare parts or accessories:

**Section 4. Certificate of Authority.** After a thorough evaluation of the application for importation, the Board shall issue a Certificate of Authority for importations covered under this E.O. The Certificate of Authority shall include, among others, the registration no. and type of registration, date of application and issuance, validity period, quantity and description of the machinery, equipment, spare parts and accessories to be imported, AHTN Chapter Heading, and the applicable tariff line.

The Board shall act on the application within ten (10) workings days from its official acceptance. The action of the Board, whether it be approval or disapproval, shall be communicated in writing to the applicant. A copy of the Certificate of Authority to import shall be sent to the Office of the Commissioner of the Bureau of Customs.

**Section 5. 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 machinery, equipment, spare parts or accessories imported, the names of the supplier and carrying vessel and its anticipated or actual date of arrival, together with the Certificate of Authority. Upon release of the DOF endorsement, the applicant shall file an import entry declaration with the Bureau of Customs (BOC), supported by the following documents:

- (1) Commercial Invoice;
- (2) Bill of Lading;
- (3) BOI Certificate of Authority; 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 Chapter Headings provided under the E.O. and record in the Import Report all pertinent data relative thereto.

If, upon verification and inspection, of the importation by the Bureau of Customs, the tariff classification is found to be different from the applicant's classification, the Bureau of Customs classification shall prevail however, the registered enterprise may appeal the same to the Tariff Commission. The shipment shall be released upon payment under protest of the appropriate duty rates or the posting a cash bond or a surety bond from any government bonding company equivalent to the duties thereto. If the Bureau of Customs' classification will still fall under the Chapter Headings provided under the E.O., the modified duty rate shall apply subject to amendment of the Certificate of Authority.

The BOC shall provide the DOF quarterly report on the import availment of BOI qualified registered enterprises under this E.O.

**Section 6. *Validity of Authority to Import.*** The Certificate of Authority to import shall be valid for a period of six (6) months from the date of issuance.

Provided however, that machinery, equipment, spare parts or accessories, covered by a certificate of authority, which were loaded on or before the six-month period, as reflected in the bill of lading date, and have arrived after such date but not yet withdrawn from the customs custody, or are still in transit shall still qualify for the modified duty rate as applicable.

Extension of validity may be granted in meritorious cases, such as but not limited to force majeure, off-the-shelf equipment, for a period of six (6) months and solely for the purpose of duty free or reduced duty, whichever is applicable, release of the machinery, equipment, spare parts or accessories from the Bureau of Customs. The request for extension shall be filed before the expiration of the period sought to be extended and no further extension shall be allowed.

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

**Section 7. *Performance Bond.*** The posting of performance bond from any government bonding company, equivalent to the duties waived on the imported machinery, equipment, spare parts or accessories shall be a pre-condition to the zero duty or reduced duty importation to registered enterprises. The bond shall be forfeited if the registered enterprise fails to meet any of its export, production or revenue commitment, whichever is applicable, to the Board.

The Board may, in meritorious cases, lift the performance bond posted on imported capital equipment.

**Section 8. Monitoring of Imported Capital Equipment.**

- (a) After the equipment has been released from the customs' premises, the qualified registered enterprise shall give written notice thereof to the Board together with copies of the Import Entry and Internal Revenue Declaration (IEIRD) issued by the Bureau of Customs and pertinent documents within fifteen (15) days from release of shipment, for monitoring and statistical purposes.
- (b) The Board shall also be informed of the installation date within ten (10) days therefrom. 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 prior approval of the Board. The capital equipment shall have an inscription that it was acquired pursuant to the E.O.
- (c) The machinery or equipment shall, at any reasonable time, be subjected to inspection by the Board for the purpose of verifying whether it has actually been installed and is being used by the registered enterprise in its registered activity.
- (d) Any violation of the provision of the E.O., its Implementing Rules and Regulations and terms and conditions shall be meted with the applicable penalty under E.O. 226.

**Section 9. Sale or Disposition of Capital Equipment.** Any sale, transfer, assignment, donation or other form of disposition of machinery, equipment including spare parts and accessories imported by virtue of the E.O., within five (5) years from date of acquisition shall require prior approval of the Board. Such approval shall be granted only if the sale or other form of disposition is made:

- (a) to another qualified registered enterprise;
- (b) for reasons of technical obsolescence as determined by the Board;
- (c) for purposes of replacement to improve and/or expand the operations of the registered enterprise;

In the event that the registered enterprise sells, transfers, or disposes the machinery, equipment, spare parts or accessories without prior Board approval within five (5) years from date of acquisition, the registered enterprise and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of the duties waived to the Bureau of Customs.

In cases of cessation from operations of the registered enterprise, the capital equipment 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 Board.

Any sale, transfer, assignment or other form of disposition of machinery, equipment, spare parts or accessories after five (5) years from date of acquisition shall likewise require prior Board approval.

### **RULE III. EFFECTIVITY AND TRANSITORY PROVISIONS**

**Section 1.** The modified duty rate provided under the E.O. shall be availed by the qualified registered enterprise for a period of two (2) years from its effectivity or until 06 June 2006.

**Section 2.** The qualified registered enterprises with valid Certificate of Authority whose machinery, equipment, spare parts or accessories were loaded, as reflected in the bill of lading date, on or before 06 June 2006, and have arrived after such date but not yet withdrawn from customs custody; or are still in transit shall be entitled to the modified duty rate importation under the E.O.

**Section 3.** These Implementing Rules and Regulations shall take effect immediately following its publication in a newspaper of general circulation.

Approved. 07 JUN 2004 , Makati, Philippines.

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