



REPUBLIC OF THE PHILIPPINES  
BOARD OF INVESTMENTS

DTI-BOI ADMINISTRATIVE ORDER NO. 12-01 Series of 2012

**IMPLEMENTING RULES AND REGULATIONS OF EXECUTIVE ORDER  
NO. 70, ENTITLED "REDUCING THE RATES OF DUTY ON CAPITAL EQUIPMENT,  
SPARE PARTS AND ACCESSORIES IMPORTED BY BOARD OF INVESTMENTS (BOI)  
REGISTERED NEW OR EXPANDING ENTERPRISES"**

Pursuant to Section 4 of Executive Order No. 70, 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. 70.
- (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 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 the date 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 1. Qualified Activities** – The activities listed under the Investment Priorities Plan (IPP) annually prepared by the BOI and duly approved by the President that is in force during the effectivity of this EO are qualified under this Rules.

**Section 2. Qualified Enterprises** – Enterprises registered with the BOI, 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,

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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, 91 and 96 of the Tariff and Customs Code of the Philippines, as amended. (Listed in the Annex attached hereto)

**Section 3.** *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 registered enterprises 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 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 acquisition cost of such capital equipment, spare parts and accessories imported into the Philippines, assuming all applicable taxes and duties were paid thereon, plus a fifteen percent (15%) mark-up;

(b) They are reasonably needed and will be used exclusively by the enterprise in its registered activity; and

(c) The approval of the BOI was obtained by the registered enterprise for the importation of such capital equipment, spare parts and accessories before the purchase order is made or before the corresponding letters of credit were opened. 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 by the Customs authorities.

(d) Subject to reasonable allowance, the rated capacity of the capital equipment, if applicable, to be imported is within the registered capacity of the registered enterprise.

**Section 4.** *Requirements for Authority to Import.* In addition to the conditions set forth in Section 2, the qualified 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 BOI approval may be secured for the importation of the capital equipment, spare parts or accessories.

**Section 5.** *Certificate of Authority.* After a thorough evaluation of the application for importation, the BOI shall issue a Certificate of Authority for importations covered under this E.O. The Certificate of Authority 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, AHTN Chapter Heading, and the applicable tariff line.

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 Certificate of Authority to import shall be sent to the Office of the Commissioner of the Bureau of Customs.

**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 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.

In case of disparity on the tariff classification after verification and inspection of the importation by the Bureau of Customs, the Bureau of Customs classification shall prevail. However, if the Bureau of Customs classification falls under the Chapters covered under this E.O., the zero duty rate shall still apply subject to amendment of the Certificate of Authority.

If the applicant's tariff classification, as determined by the Bureau of Customs, falls outside the Chapters covered in 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 a surety bond from any government bonding company equivalent to the duties thereto. The qualified enterprise may appeal the same to the Secretary of Finance.

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

**Section 7. *Validity of Authority to Import.*** The Certificate of Authority to import shall be valid for a period of one (1) year from date of issuance.

Provided however, that capital equipment, spare parts or accessories, covered by a Certificate of Authority, which were loaded on or before the one-year 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 reduced duty rate.

Subject to the approval of the BOI Board, extension of validity may be granted in extremely meritorious cases, such as but not limited to force majeure, or customized or specially fabricated equipment.

In the event that the Certificate of Authority 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 duty importation to registered 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 Board may waive the performance bond posted on imported capital equipment, spare parts and accessories for qualified enterprises with good track record.

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

(a) After the capital equipment, spare parts and accessories has been released from the customs' premises, 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 Bureau of Customs and pertinent documents 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 was acquired pursuant to the E.O.

(c) The capital equipment 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 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 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 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:

- (a) to another qualified enterprise;
- (b) for reasons of technical obsolescence as determined by the BOI;
- (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 capital equipment, spare parts or accessories without prior BOI 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 foregone or five hundred thousand pesos (Php500,000.00), whichever is higher, without prejudice to other applicable penalties under E.O. 226.

In cases of cessation from operations of the registered enterprise, the 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 1.** Any violation by a registered 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 the event that the penalties are not paid.

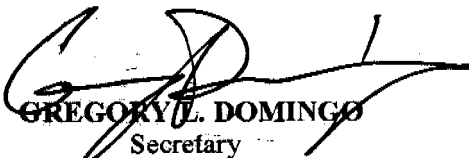
### **RULE IV. EFFECTIVITY AND TRANSITORY PROVISIONS**

**Section 1.** The zero duty rate provided under the E.O. shall be availed by the qualified enterprise for a period of five (5) years from the date of its registration or until the expiration of EO 70, whichever is earlier.

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

**Section 3.** This Implementing Rules and Regulations shall take effect fifteen (15) days following its complete publication in a newspaper of general circulation.

Approved, 10 May 2012, Makati, Philippines.

  
**GREGORY L. DOMINGO**  
Secretary  
Department of Trade and Industry