

EXPORT DEVELOPMENT ACT OF 1994

[Republic Act No. 7844]

AN ACT TO DEVELOP EXPORTS AS A KEY TOWARDS THE ACHIEVEMENT OF THE NATIONAL GOALS TOWARDS THE YEARS 2000

ARTICLE

I BASIC PRINCIPLES AND POLICIES

SECTION 1.

Short title. - This Act shall otherwise be known as the "Export Development Act of 1994."

SEC. 2.

Declaration of policy. - It shall be the policy of the State to evolve export development into a national effort. The government shall champion exports as a focal strategy for a sustainable agri-industrial development to achieve Philippine NICHood towards the year 2000. The private sector shall take the lead in the collective effort to promote exports through discipline and hard work, as it confronts the challenge of winning international markets.

The government and the private sector shall jointly transform the Philippines into an exporting nation. Towards this end, the State shall instill in the Filipino people that exporting is not just a sectoral concern, but the key to national survival and the means through which the economic goals of increased employment and enhanced incomes can most expeditiously be achieved.

SEC. 3.

Key operating principles. - A macro-economic policy framework that supports export development shall be provided, especially in key areas of concern to exporters:

[a] Monetary and foreign exchange policies shall establish and maintain a competitive exchange rate, supported by measures to provide safety nets for various sectors that may be adversely affected by the implementation of such policies. Such policies shall be consistent with the responsibility and primary objectives of the Bangko Sentral ng Pilipinas pursuant to Section 3 of Republic Act No. 7653.

[b] Fiscal and credit policies shall provide adequate funds for public and private investments and business expansion, while keeping the cost of credit comparable to international levels ensuring access to loanable funds for SMEs as well as highly technical export enterprises, especially those in the countryside.

[c] Agricultural policies shall build up viability and competitiveness of the country's agriculture sectors and facilitate their linkage with industry to strengthen the agri-industrial base of the country's export thrust.

[d] Trade, tariff and customs policies shall engender competitiveness of domestic industries and facilitate their participation in international trade.

[e] Technical support policies to improve the quality of export products shall be adopted, particularly those relating to technology transfer, R & D, technical training and related activities. As such, the Department of Science and Technology [DOST] and the Department of Agriculture [DA] shall be supported by colleges and universities in the diffusion of technology, information and training to the countryside for agri-industrial and export development.

[f] Urgent attention must be given to policies affecting infrastructure in order to ensure the adequate supply and quality of power, water [e.g., for irrigation], transportation [e.g., shipping and cargo handling], and communication to support the flow of goods and services in the context of the national export drive.

[g] The link between export growth and countryside development must be strengthened through policies favorable to SMEs, regional industrial centers, and export processing zones to boost rural and farm-based entrepreneurship in identified geographic economic growth areas of the country.

[h] Labor and industrial relations policies must recognize the inevitable industrial shifts that will occur in the effort to achieve international competitiveness. Focus shall be given to the formulation of accords between labor and management which shall provide for sustained increase in productivity and competitiveness. In line with this, dual training schemes shall be integrated as a basic component to the country's primary and secondary education program to ensure that the manpower needs of agriculture and industry will be matched by the skills generated by the educational system. Reasonable price and income policies shall likewise be adopted in order to safeguard the interest of the labor sector.

[i] All government agencies whose actions affect exporters, such as the Board of Investments [BOI], Bureau of Customs [BOC] and Bureau of Internal Revenue [BIR] shall simplify procedures to minimize bureaucratic red tape.

[j] Provisions of existing laws deemed detrimental to the export sector shall be repealed in subsequent acts.

SEC. 4.

Definition of terms. - For purposes of this Act, the following definitions shall apply to the following terms:

[a] "Exporter" means any person, natural or juridical, licensed to do business in the Philippines, engaged directly or indirectly in the production, manufacture or trade of products or services which earns at least fifty percent [50%] of its normal operating revenues from the sale of its products or services abroad for foreign currency : Provided, That in the case of services, the same shall be limited to information technology services, construction services and other services as defined jointly by the Department of Finance [DOF] and the Department of Trade and Industry [DTI]. Services rendered by overseas contract workers are not covered by the definition.

[b] "Export promotion" shall refer to a range of export activities which the public and private sectors undertake, such as networking, especially in export support services and the provision of trade/market information; organization of trade fairs and missions; provision of advisory services ; conduct of seminars, lectures, workshops, conferences and training on export-related subjects; publication of export-related documents; handling of quality standard, product design and such other activities aimed at promoting existing exports, especially those meant to reinforce and improve the position of Philippine export products in specific foreign markets, principally being those activities necessary for the implementation of the Philippine Export Development Plan.

[c] "Export incentives" shall refer to support measures provided by the government to exporters to encourage investment in the export sector, create a freer trade environment and motivate exporters to increase export sales and perform competitively in the export market. The overall

objective is to increase the country's export sales.

[d] "Accredited organization" shall refer to the organization of exporters granted accreditation by the Export Development Council, as provided in Section 7[1] of this Act.

ARTICLE II INSTITUTIONAL STRUCTURES AND STRATEGIES

SEC. 5.

Philippine Export Development Plan [PEDP]. - The President of the Republic of the Philippines shall approve a rolling three-year Philippine Export Development Plan prepared by the Department of Trade and Industry [DTI] which shall form part of the medium-term Philippine Development Plan [MTPDP]. It shall be formulated in consultation with the private sector, validated and updated semestrally.

The PEDP shall define the country's annual and medium-term export thrusts, strategies, programs and projects and shall be jointly implemented by the government, export and other concerned sectors.

SEC. 6.

Export Development Council. - The existing Export Development Council, hereinafter referred to as the Council, which was created by Executive Order No. 98 [1993] as modified by Executive Order No. 110 [1993], and Executive Order No. 180 [1994], shall be strengthened and institutionalized for the purpose of overseeing the implementation of the PEDP and coordinating the formulation and implementation of policy reforms to support the said Plan.

SEC. 7.

Powers and functions. - The Council shall:

[a] approve the PEDP; coordinate, monitor and assess the implementation thereof, and when necessary, institute appropriate adjustments thereon in the light of changing conditions in both the domestic and international environment;

[b] periodically review and assess the country's export performance, problems and prospects;

[c] identify the main bottlenecks, problem areas and constraints in all areas/sectors/activities which influence the development of exports, including but not limited to, such matters as policy framework, physical infrastructure, finance, technology, production, promotions and marketing;

[d] mandate specific departments and agencies to attend to the bottlenecks and problems constraining the development of exports in any of the areas mentioned in paragraph [c] above, and require the concerned Secretaries to deliver progress report[s] on the actions/initiatives taken to resolve these areas of concern at the next meeting[s];

[e] ensure export quality control by overseeing the formulation and implementation of quality control guidelines by appropriate agencies to make Philippine exports at par with world-class products;

[f] impose sanctions on any government agency or officer or employee thereof, or private sector entity that impedes efficient exportation of Philippine goods;

[g] recommend to Congress any proposed legislation that would contribute to the development of exports;

[h] submit quarterly reports to Congress;

[i] formulate policies or recommend measures and draw up a study within ninety [90] days from the approval of this Act, relative to the rationalization of the government's export promotion and development functions/activities and programs for the eventual transfer of government export promotions and development activities to the sector within a period of two [2] years after the approval of this Act;

[j] formulate the policies for the granting of incentives to exporters;

[k] adopt such policies, rules, procedures and administrative systems for the efficient and effective exercise of its powers and functions, including the creation or adoption of an executive committee or secretariat; and

[l] grant and review the accreditation of the organization of exporters, according to the guidelines which it shall later promulgate for the said purpose: Provided, That the organization accredited shall be the dominant one among the other existing export organizations as determined under the guidelines promulgated by the Council hereof.

[m] issue standards and policies to be observed by Local Government Units [LGUs] in order to :

[1] ensure that LGUs' plans and budgets are supportive of agri-industrial growth and export competitiveness thrusts of the national government; and

[2] ensure optimal allocation of expenditures.

The DILG and the regional development councils shall be the channels through which these standards and policies shall be coursed.

Sec. 8.

Composition of the Council. - The Council shall be composed of the following:

[a] Secretary of the Department of Trade and Industry as chairman;

[b] Director-General of the National Economic and Development Authority;

[c] Secretary of the Department of Finance;

[d] Governor of the Bangko Sentral ng Pilipinas;

[e] Secretary of the Department of Science and Technology;

[f] Secretary of the Department of Agriculture;

[g] Secretary of the Department of Foreign Affairs;

[h] Secretary of the Department of Labor and Employment;

[i] Nine [9] representatives from the private sector, the majority of whom shall be recommendees of the accredited organization, and one of whom shall be appointed as vice-chairman.

Other heads of executive agencies, private organizations or individuals can be called upon by the Council to attend any Council meeting and assist the Council to resolve issues and problems that concern their respective offices.

Likewise, such heads of executive agencies, private organizations or individuals shall respond to the queries of the Council within two [2] weeks from the time such queries are received.

SEC. 9.

Mode of selection and tenure of private sector representatives. – The President shall appoint the private sector representatives, who are not ex officio members, upon nomination of the accredited organization, ensuring balanced representations from the Visayas and Mindanao and various sectors, such as the labor sector, agricultural and traditional export sectors as against the non-agricultural and non-traditional export sectors and the like.

The private sector representatives of the Council shall serve for a period of two [2] years. When a vacancy occurs due to the resignation, death or incapacity of a member, a replacement who shall serve for the remainder of the member's term of office shall be appointed by the President.

SEC. 10.

Meeting of the Council. – The Council shall meet once a month: Provided, That the President or the chairman may convene the Council anytime whenever he deems it necessary.

The President shall preside over meetings of the Council on a quarterly basis.

SEC. 11.

Funding. – The activities and operational expenses of the Council shall be funded jointly by budgetary appropriations from the government and by private sector contributions as provided for in Executive Order No. 98.

SEC. 12.

Accredited export organization. – The Council shall accredit a single umbrella organization of exporters pursuant to section 7[1] of this Act to represent the export sector concerns and interests for three [3] years, after which the Council shall undertake a review of the accreditation prior to the granting or re-granting of the said accreditation.

The accredited organization shall:

[a] recommend private sector representatives to the Council with consideration of balanced sectoral representation, as provided in Section 9 hereof;

[b] represent the interests of the export sector;

[c] be responsible for coordinating, supporting and assisting the DTI relative to the formulation and implementation of the government's export promotion programs and policies: Provided, That in the event that some of the export promotion functions of the government are privatized in accordance with the Act, it shall be responsible for the performance of such privatized export promotion function; and

[d] manage the Philippine Trade Center, which shall include, among others, the authority to enter into contracts with promotion facilities or functions.

SEC. 13.

Export financing guarantee and insurance. – Pursuant to Section 7[1] of this Act, the Council shall make the necessary legal and feasibility study/recommendation on the alignment and rationalization of government programs relative to export financing and existing organizations dealing primarily and exclusively with export financing guarantee and insurance and likewise considering the creation of a private sector led export financing institution whose services

shall be primarily devoted towards supporting the operations of exporters and indirect exporters, particularly the SMEs.

The study shall include the powers, functions, and operations of the proposed institution, and government contributions to the said institution, and if and when necessary the preparation of a bill creating the same which the Council may recommend to Congress within six (6) months after the effectivity of this Act.

The government counterpart funds shall come from direct budgetary appropriations and from consolidated capital funds of government institutions involved in export financing and guarantees, or from equity contributions from government financial institutions.

SEC. 14.

Export promotion and information. - As provided in Section 7[1] of this Act, the Council through the DTI shall prepare an export promotion privatization program within ninety [90] days from the approval of this Act and shall subsequently identify the appropriate funding mechanism for such a program. The privatization process shall be completed within a period two [2] years.

While the appropriate funding mechanism is not yet in place, financial and technical assistance to the accredited organization on a project-to-project basis shall be granted. In this regard, the national government shall appropriate such sums as may be necessary to the Council to be exclusively earmarked for export promotion and information until such time that the Council establishes the funding mechanism. The Council shall formulate the criteria to avail of this financial and technical assistance and the extent to which the assistance shall be granted with the primary consideration of encouraging the formation of a nationwide marketing cooperative for export promotion.

SEC. 15.

Philippine Trade Center. - The government shall hereby assist the private sector in the establishment of Philippine Trade Centers which shall house the trade promotion offices and shall serve as permanent exhibit sites of the country's export products. In this regard, the government shall provide the land for the center, through a land grant or long term lease to the accredited organization, and shall arrange financing for the construction of the trade complexes. Upon its establishment, the centers shall be managed by the accredited organization.

ARTICLE III OTHER INCENTIVES

SEC. 16.

Incentives. - In addition to existing incentives provided by the Board of Investments, the following incentives shall likewise be granted to exporters:

[a] Exemption from Presidential Decree No. 1853, provided that the importation shall be used for the production of goods and services for export.

[b] Importation of machinery and equipment and accompanying spare parts which are used in the manufacture of exported products at zero percent [0%] duty for a period of three [3] years, until 1997.

[c] Tax credit for imported inputs and raw materials primarily used for the production and packaging of export goods, which are not readily available locally, shall be valid for five [5] years. Provided, That the tax credit shall be issued within thirty [30] days from exportation.

[d] Tax credit for increase in current year's export revenue computed as follows:

The first 5% increase in annual export revenue over the previous year would mean a credit of 2.5% to be applied on the incremental export revenue converted to pesos at the current rate;

The next 5% increase would be entitled to a credit of 5.0%;

The next 5% increase would be entitled to a credit of 7.5%;

In excess of 15% would be entitled to a credit to 10%.

Such tax credit is only granted for the years when the performance is achieved. Export revenues used in the calculation of such tax credits shall be subject to verification as prescribed under the implementing rulers and regulations.

[e] For exporters of non-traditional products who use or substitute locally produced raw materials, capital equipment and/or spare parts, tax credits equivalent to twenty-five percent [25%] of the duties that would have been paid had these inputs been imported; Provided, That this incentives would be available for a period of three [3] years upon effectively of this Act and can be extended for another three [3] years by the President upon the recommendation of the Secretary of Finance; Provided, further, That the Secretary of Finance, in consultation with the Export Development Council, shall prepare a list of non-traditional exports which are entitled to avail of this incentives: Provided, That these incentives shall be granted only upon; [1] the presentation of a Bureau of Export Trade Promotion [BETP] certification of the exporter's eligibility, in compliance with the minimum wage and SSS laws; and that [2] in the case of importation, the items imported shall be used exclusively for production of export goods.

[f] In the interim, while the Eximbank is not yet established, government financial institutions [GFIs] including the Development Bank of the Philippines [DBP], the Philippine National Bank [PNB] and the Land Bank of the Philippines shall extend credit facilities to be used for plant and equipment expansion purposes, among others. These credit facilities shall offer preferential and simplified credit schemes to exporters.

SEC. 17.

Negotiability. - All tax credit herein provided shall be negotiable.

ARTICLE IV TRANSITORY PROVISIONS

SEC. 18.

Appointment of private sector representatives. - Upon the effectivity of this Act, the President of the Republic of the Philippines shall appoint the nine [9] private sector representatives to the Council who shall serve for a term of two [2] years. Thereafter, the determination of the private sector representatives shall be governed by Section 9 of this Act.

SEC. 19.

Funding of the Council. - Upon the effectivity of this Act, the budget granted to the old Export Development Council shall be transferred to the new Council created under this Act. Thereafter, such sums as may be necessary for its operation and maintenance shall be included in the annual General Appropriations Act.

SEC. 20.

Operation of the Council. - the Council shall immediately function one [1] month after the approval of this Act.

ARTICLE V CRIMINAL OFFENSES AND PENALTIES

SEC. 21.

Non-compliance of the mandatory provisions of this Act. – Any person, entity, government instrumentality or institution, found to be willfully violating or grossly negligent in executing the mandates of this Act shall result in the expulsion from office of its chief executive and operating officers, as well as the responsible officers thereof. Notwithstanding any provision of law to the contrary, they shall likewise be prohibited from holding any government position for least two [2] years.

ARTICLE VI ADMINISTRATIVE PROCEDURES AND SPECIAL CLAUSE

SEC. 22.

Implementing rules and regulations. – The Secretaries of Trade and Industry and Finance, in consultation with the Council, shall formulate the rules and regulations to implement the provisions of this Act.

SEC. 23.

Separability clause. – The provisions of this Act are hereby declare separable and in the event any of such provisions is declared unconstitutional, the other provisions which are not affected thereby shall remain in force and effect.

SEC. 24.

Repealing clause. – All other laws, decrees, executive orders, administrative orders, rules and regulations or parts thereof which are inconsistent with the provisions of this Act are hereby repealed , amended or modified accordingly.

SEC. 25.

Effectivity. – This Act shall take effect two [2] weeks after its publication in the Official Gazette or in at least two [2] national newspapers of general circulation in the Philippines, whichever comes earlier.

This Act which is a consolidation of House Bill No. 12073 and Senate Bill No. 1863 was finally passed by the House of Representatives and the Senate on December 20, 1994.

Approved: 21 December 1994