

## [ PITC JOINT CIRCULAR, November 14, 1994 ]

### COUNTERTRADE AS A SUPPLEMENTAL TRADE TOOL WITH RESPECT TO THE IMPORTATION OR PROCUREMENT OF FOREIGN CAPITAL EQUIPMENT, MACHINERY, PRODUCTS, GOODS AND SERVICES"

#### 1

##### Purpose

These rules and regulations are promulgated in compliance with Section 6 of E.O. No. 120 dated August 19, 1993, mandating the Department of Trade and Industry, the Department of Finance, the National Economic and Development Authority and the Philippine International Trading Corporation to jointly formulate and issue the necessary guidelines and rules to implement the provisions of said Executive Order.

#### 2

##### Definition of Terms

For purposes of these rules and regulations, the following terms shall have the following meanings:

2.1 **Countertrade** is a general term for an international transaction that is premised on some form of reciprocity which may be one (or a combination of) the transactions listed in this Section.

2.2 **Counterpurchase** also known as counterexports, counterdelivery, parallel transactions or reciprocal trade is a form of countertrade whereby the foreign supplier reciprocally commits to accept/purchase Philippine products or services to be exported to the foreign supplier's country or to a third country.

2.3. **Offset** is a form of countertrade arrangement whereby the foreign supplier commits to introduce investments or technology transfers in the Philippines or assist in the establishment of new industries with export capacity or development and expansion of existing manufacturing, technological and industrial capabilities of the Philippines to generate/ save foreign exchange and create/increase employment opportunities, which *may or may not* be related to the equipment, machinery, products, goods or services imported by the Philippines. If so related, these are considered as **Direct Offsets**, and if not so related, the same are considered as **Indirect Offsets**.

Activities qualified as either Direct Offsets or Indirect Offsets are listed in Annex "A" hereof. (*See below*)

2.4 **Product Buy Back** is a form of countertrade whereby the foreign supplier of machinery, equipment, or technology is paid for by the resultant product(s) or good(s) made or manufactured from such equipment, machinery or technology.

Some acceptable forms/variations of Product Buy-Back are listed in Annex "B" hereof. (See below)

**2.5 Trade-for-Debt Swap or Debt-for-Goods or Services** is a form of countertrade arrangement whereby a loan or credit obtained by a government agency or government-owned and controlled corporation from a foreign government or creditor is arranged to be settled in full or in part by way of delivery of products/goods or services.

**2.6 Any form or combination or variation of the above arrangements** shall mean any arrangement or transaction similar to or comprising any one or more versions, forms or combinations of the activities listed in Section 2.1 to 2.6 of these rules that result in the inflow to the country of foreign exchange or savings thereof, investments, training and technology transfers, grants for educational, scientific, technological, environmental and related research programs or utilization of Philippine services or expertise by foreign clients or result in the reduction of public debt. Such arrangements may include: Debt-for-Nature, Debt-for-Culture, Education and Debt-for-Technology and those enumerated in Section 2(b) to (j) of R.A. 7718 amending R.A. 6957 (the BOT Law).

**2.7. Foreign Supplier** means the supplier of the imported capital equipment, machinery, product, good, technology or service including agents or representatives thereof in the Philippines.

**2.8. Philippine Products** means any item produced, manufactured or assembled in the Philippines which has a minimum local content of at least 51%. Mineral, aquatic, agricultural and forest resources derived from Philippine territory (not otherwise banned for exports by the Philippine Government) are included in this definition.

**2.9 Philippine Services** means any legitimate service rendered utilizing Filipino labor and skills.

### **3 Coverage**

**3.1** The provisions of E.O. No. 120, s. 1993 shall cover all importations or procurement of foreign capital equipment, machinery, products, goods and services of departments, bureaus, agencies, offices and instrumentalities of the National Government, including government owned and controlled corporations entailing the payment in foreign currency of at least United States Dollars: ONE MILLION (US\$1,000,000.00) or its equivalent in other foreign currency.

**3.2** For purposes of determining the value of the government importations, the total contract price for said importation, whether on CIF, FOB or otherwise as appearing in the pertinent invoices/contracts, regardless of the delivery/shipment quantities (*i.e.* in installments with or without down payments, in cash or credit, etc.) shall be considered in the determination of whether the same are covered by these rules and regulations. No splitting of purchase orders/contracts shall be allowed in circumvention of these guidelines.

### **4 Exemption**

**4.1** The following importations are excluded from the coverage of these rules and regulations:

- a. Those funded by outright donations or grants-in-aid under government-to-government arrangements.
- b. Those whose purchase or supply contracts were concluded prior to the signing of E.O. No. 120.
- c. Those to be used or to form part of finished or semi-finished products/goods for re-export.
- d. Those which may be exempted by the Secretary of Trade and Industry, *motu proprio* upon the recommendation of PITC.

4.2 All exempted importations as enumerated in 3.1 above shall require the submission of an Application for Exemption to PITC enumerating the grounds for exemption; Provided that: PITC may issue a master exemption for recurring importations of the same kind by the same entity valid for a period of one (1) year, subject to renewals as merited by the circumstances.

4.3 After receipt of said Application for Exemption, PITC shall review the same and if warranted, approve the said application provided that in cases covered under Section 4.1 (d) hereof, PITC shall endorse the same to the Secretary of Trade and Industry for review and approval.

## **5**

### **Countertrade Management and Administration**

5.1 Pursuant to Section 3 of E.O. No. 120, the Department of Trade and Industry through the Philippine International Trading Corporation (PITC) shall be the government office responsible for the implementation, management, and administration of this Program.

5.2 Powers and functions of PITC:

- a. Formulation of policies relative to countertrade in the Philippines taking into consideration international developments and practices on countertrade in order to make countertrade a viable tool for the achievement of the goals of Philippines 2000.
- b. Outline terms of cooperation with other countries and appropriate international organizations on the use of countertrade as alternative trade tools.
- c. Endorse or recommend approval of applications for exemptions under Section 4.1 (d) hereof.
- d. Provide advisory/consultative services to Philippine government departments, bureaus, offices, agencies and government-owned and controlled corporations on policy matters relating to countertrade.
- e. As necessary, act on countertrade-related issues including matters relating to the interpretation of these rules brought before it for proper adjudication.
- f. Issue such circulars/memoranda as may be necessary to implement these rules including the determination of procedures for the conduct of business and meetings relative to countertrade in government procurement.

g. Coordinate and assist all government departments, agencies, bureaus, offices and instrumentalities including government owned and controlled corporations in formulating and implementing appropriate strategies on countertrade and similar arrangements relative to any foreign procurement or importation of capital equipment machineries, products, goods and services covered by these rules.

h. Review and evaluate all countertrade/offset proposals submitted by foreign suppliers or entities relative to procurement/importations covered by these rules in coordination with the procuring office concerned.

i. Secure and maintain an annual Government Countertrade Foreign Procurement List covering yearly government procurement/importations covered by these rules in cooperation with all government procuring offices concerned which shall be the basis for developing countertrade/offset packages and arrangements.

j. Negotiate, formulate, package and conclude countertrade or similar arrangements, contracts and/or agreements with foreign suppliers or their designated nominees/agents relative to government procurement/importation covered by these rules.

k. Submit regular status reports to the Secretary of Trade and Industry and concerned government agencies on the status of all countertrade transactions/projects in the country.

l. Perform such other functions as may be necessary under the circumstances.

5.3 In addition to the foregoing, PITC shall be the over-all coordinating and monitoring office/agency of the Philippine government for countertrade/offsets and shall act as the Countertrade nominee of procuring departments, bureaus, offices and instrumentalities of the National government including government owned and controlled corporations with respect to countertrade in foreign procurement/importations.

5.4 PITC's Countertrade Department shall be administratively responsible for overseeing and carrying out the functions enumerated above under the over-all supervision of the President of PITC.

## **6**

### **Processing and Evaluation of Countertrade Proposals in Bids/Offers of Foreign Suppliers**

6.1 All departments, bureaus, agencies, offices and instrumentalities of the National government including government owned and controlled corporations must submit to the PITC no later than the second week of November of every calendar year, a list of proposed importations which are covered by these guidelines, together with their approximate values, product information and foreign suppliers of the said importations. In case an importation was not among those listed and submitted to PITC during the previous year, the same must be submitted to PITC at least one (1) month before the intended date of bidding (for bidded purchases) or purchase (for negotiated purchases) for these items. This shall form a basis for an Annual Government Countertrade Foreign Procurement List to be drawn up by PITC.

6.2 PITC shall review the List submitted and shall thereafter coordinate with the government procuring offices concerned (i) on the importations/procurements which are subject to countertrade and (ii) to ensure that all efforts are exerted for the

inclusion of countertrade commitments of the foreign suppliers as one of the factors/criteria in the evaluation of the bidding documents/tenders and/or selection of a foreign supplier.

To facilitate proper coordination, all government importing offices concerned shall designate a countertrade officer or a countertrade desk within their respective organizations which shall handle all countertrade matters relative to their foreign procurement and coordinate with PITC on said matters,

6.3 In the evaluation of the bid tenders or sales offers submitted by the foreign supplier, the government procuring agency/office concerned shall give preference/priority (product specifications, quality considerations, pricing and related terms being equal) to the foreign supplier offering the most favorable countertrade arrangement for the Philippines.

6.4 Within five (5) working days or earlier from selection of the foreign supplier of the capital equipment, machinery, products, goods or services, the government importing office concerned shall notify PITC in writing of the details of importation as well as the countertrade proposal of the foreign supplier selected together with copies of the bid tender or sales offer of the foreign supplier containing its countertrade commitments.

In case the winning foreign supplier has made countertrade proposal/commitment, the government agency/office concerned must present to PITC proof that all efforts were exerted to solicit countertrade offers/proposals from said supplier; and PITC reserves the right to take necessary initiatives towards securing countertrade commitments from said supplier.

6.5 PITC shall evaluate the countertrade proposals submitted by the foreign supplier in accordance with the Evaluation Criteria established by PITC and thereafter coordinate with the foreign supplier on the final countertrade arrangements and supplemental contracts to be executed thereunder.

6.6 PITC shall keep the government importing office concerned apprised/updated on all subsequent development relative to the countertrade package developed for their respective procurements/ importations and solicit their cooperation/assistance in these matters as may be necessary.

## **7**

### **Countertrade Performance**

7.1 Countertrade in its various forms shall be carried out/performed between PITC, as the countertrade nominee of the government procuring office, and the foreign supplier concerned or its designated countertrade nominee (hereinafter referred to as "Countertrader"). In this regard, a foreign supplier is allowed to transfer/assign its countertrade obligations to PITC or to any other Countertrader who shall fulfill its countertrade obligations subject to prior written approvals of such transfer/assignment by the government procuring office concerned and PITC. The selection of the Countertrader, while being the prerogative of the foreign supplier, must adequately demonstrate to the satisfaction of PITC that the designated Countertrader is suitably capable of fulfilling the countertrade obligations in accordance with these rules.