

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

17th Congress
Second Regular Session

HOUSE BILL NO. 6196



Introduced by Deputy Speaker Raneo "Ranie" E. Abu

AN ACT
PROMOTING THE ADOPTION OF COUNTERTRADE ON THE
IMPORTATION AND PROCUREMENT OF FOREIGN CAPITAL
EQUIPMENT, MACHINERY, PRODUCTS, GOODS AND SERVICES BY
THE GOVERNMENT

EXPLANATORY NOTE

This bill seeks to promote the adoption of the countertrade policy on the importation and procurement of foreign capital equipment, machinery, products, goods and services by the government.

Countertrade refers to various forms of trade in which an international sale of products, services and technology is conditional upon a sale in the opposite direction involving payment primarily in goods and services in lieu of money.

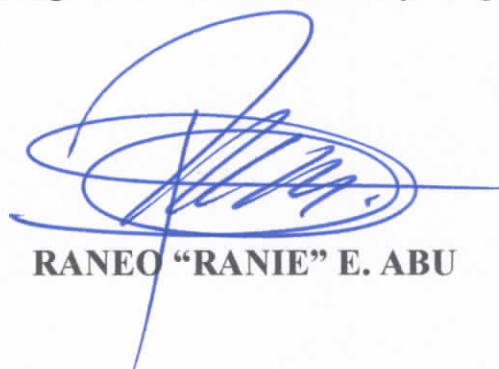
The countertrade policy was adopted by virtue of Executive Order No. 120, issued by former President Fidel Valdez Ramos on August 19, 1993. It directs the National Government, its departments, bureaus, agencies and offices, including government-owned and -controlled corporations, to adopt the countertrade policy as a supplemental trade tool with respect to importation or procurement of foreign capital equipment, machinery, products, goods and services entailing the payment of at least One Million (US\$1,000,000.00) United States Dollars or its equivalent in other foreign currency, and to negotiate and conclude on a best-efforts basis, agreements or arrangements on countertrade with respect to such importation.

The countertrade policy is a great tool in opening new markets for Philippine products and services, overcoming quota and trade restrictions of other countries,

and providing for technology transfer and industrial growth, particularly in strategic industries, such as energy, transport, infrastructure, telecommunications and defense. It provides a mechanism for countries with limited access to liquid funds to exchange goods and services with other nations. Additionally, it provides the exporting nation with an opportunity to offer goods and services in a larger international market promoting growth within the industry. However, under Executive Order No. 120, government agencies which adopt the countertrade policy must comply with the rigid requirements on procurement under Republic Act No. 9184, otherwise known as "*Government Procurement Reform Act.*" This causes delay on the countertrade processes and transactions.

Under this bill, all transactions under the countertrade arrangement entered into by the government offices, departments, bureaus and agencies, including government-owned and -controlled corporations on importation or procurement of foreign equipment, machinery, products, goods and services, are exempt from the procurement processes and bidding requirements provided under Republic Act No. 9184. With the passage of the proposed countertrade law, the current problems on the immediate procurement of needed supplies, parts and equipment for the maintenance of existing industries such as the transport sector will be resolved. This will also facilitate the inflow of investments and technologies into the country and the expansion of trade and export with other countries.

In view of the foregoing, immediate passage of this bill is earnestly sought.



RANEO "RANIE" E. ABU

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Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. **Short Title.** – This Act shall be known as the “*Countertrade Act.*”

SEC. 2. **Declaration of Policy.** – It is the policy of the State to pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity. Towards this end, the State shall promote the adoption of countertrade to compensate the foreign exchange expended for the importation or procurement of foreign capital equipment, machinery,

products, goods and services by the government, and to reciprocate for such importation or procurement through arranged counter exports of our traditional or non-traditional products to the country of the supplier or any third country, or through product buy back, offsets or investments.

SEC. 3. ***Definition of Terms.*** – As used in this Act:

(a) *Countertrade* refers to the various form of trade financing methods in which an international sale of products, services and technology is conditional upon a sale in the opposite direction involving payment primarily in goods or services in lieu of money;

(b) *Foreign supplier* refers to a supplier of the imported capital equipment, machinery, products, goods, technology or services including agents or representatives in the Philippines;

(c) *Philippine products* refer to any item produced, manufactured or assembled in the Philippines which has a minimum local content of at least 51%; and

(d) *Philippine services* refer to any legitimate service rendered utilizing Filipino labor and skill.

SEC. 4. ***Coverage.*** – All government offices, departments, bureaus, agencies and instrumentalities, including government-owned and -controlled corporations are

hereby directed to adopt the countertrade policy as a supplemental trade tool in connection with transactions involving the importation or procurement of foreign capital equipment, machinery, products, goods and services entailing the payment of at least One Million (US\$ 1,000,000.00) United States Dollars or its equivalent in other foreign currency, and to negotiate and conclude on a best-efforts basis, agreements or arrangements on countertrade with respect to such importation.

SEC. 5. *Countertrade Transactions.* – The Philippine International Trading Corporation (PITC) is the primary agency responsible for the implementation, management and administration of the countertrade transactions.

Countertrade transactions or arrangement may be in the following forms:

(a) *Barter.* - A countertrade arrangement wherein there is a direct exchange of goods without the use of money and the goods are of approximately in equal value;

(b) *Counterpurchase.* - A countertrade arrangement, also known as counter exports, counter deliveries, parallel transactions or reciprocal trades, wherein a foreign supplier reciprocally commits to accept or purchase Philippine products or services to be exported to the foreign supplier's country or to third country;

(c) ***Offset.*** - A countertrade arrangement wherein a foreign supplier commits to introduce investments or technology transfer in the Philippines, or assist in the establishment of new industries with export capacity or in the development and expansion of existing manufacturing, technological and industrial capabilities of the Philippines, to generate or save foreign exchange and create or increase employment opportunities which may or may not be related to the machinery, equipment, products or goods imported or services procured;

(d) ***Product Buy Back.*** - A countertrade arrangement wherein a foreign supplier of machinery, equipment or technology is paid for by the resultant products or goods made or manufactured from such equipment, machinery or technology; and

(e) ***Trade-for-Debt Swap or Debt-for-Goods or Services.*** - A countertrade arrangement wherein a loan or credit accommodation obtained by a government agency or government-owned and controlled corporations 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.

SEC. 6. ***Powers and Functions of PITC.*** – The PITC shall exercise the following powers and functions:

(a) Formulate policies relative to the countertrade in the Philippines taking into consideration the international developments and practices on the countertrade in order to make the countertrade a viable tool for promoting Philippine exports;

(b) Outline terms of cooperation with other countries and appropriate international organizations on the use of the countertrade as an alternative trade tool;

(c) Endorse or recommend approval of applications for the countertrade;

(d) Provide advisory or consultative services to Philippine government departments, bureaus, offices, agencies and government-owned and -controlled corporations on policy matters relating to countertrade;

(e) Act on countertrade-related issues including matters relating to the interpretation of this Act;

(f) Issue such circulars or memoranda as may be necessary to implement this Act including the determination of procedures for the conduct of businesses and meetings relative to the 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 the countertrade and similar arrangements relative to any foreign procurement or importation of capital equipment, machineries, products, goods and services covered by this Act;

(h) Review and evaluate all countertrade or offset proposals submitted by foreign suppliers or entities relative to procurements or importations covered by this Act in coordination with the procuring office;

(i) Secure and maintain an annual Government Countertrade Foreign Procurement List covering yearly government procurement or importation covered by this Act in cooperation with all government procuring offices which shall be the basis for developing countertrade or offset packages and arrangements;

(j) Negotiate, formulate and conclude countertrade arrangements, contracts or agreements with foreign suppliers or their designated nominees or agents relative to government procurement or importation covered by this Act;

(k) Submit regular status reports to the Secretary of Trade and Industry on the status of all countertrade transactions or projects in the country;

(l) Serve as over-all coordinating and monitoring agency of the Philippine Government for countertrade or offset and 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 the countertrade in foreign procurement or importation; and

(m) Exercise such other powers and functions and perform such other duties as may be authorized, delegated or assigned.

SEC. 7. *Processing and Evaluation of Countertrade Proposals.* – All government offices, agencies, bureaus, departments including government-owned and -controlled corporations must submit to the PITC a list of proposed importations, together with their approximate values, product information and foreign suppliers of the said importation not later than the second week of November of every calendar year.

The PITC shall evaluate the countertrade proposals submitted by the foreign supplier in accordance with the evaluation criteria established by the PITC and thereafter, coordinate with the foreign supplier on the final countertrade arrangements and supplemental contracts to be executed.

In the evaluation of the offer submitted by the foreign supplier, the PITC shall give preference to the foreign supplier offering the most favorable countertrade arrangement for the Philippines.

The PITC shall update the importing office on the subsequent developments relative to the countertrade package developed for their respective procurement and solicit their cooperation in these matters as necessary.

SEC. 8. *Countertrade Monitoring and Crediting Procedures.* – The PITC shall institute and maintain monitoring and crediting procedures and rules to ascertain that countertrade obligations are performed in accordance with this Act and

credit the foreign supplier or its designated countertrade nominee for due performance, on a per transaction basis. The PITC shall impose and collect monitoring fees to cover the expenses for the management and operation of countertrade.

SEC.9. ***Exemptions.*** – All transactions under the countertrade agreement entered by any government offices, departments, bureaus and agencies, including government-owned and -controlled corporations on importation or procurement of foreign equipment, machinery, products, goods and services shall be exempted from the procurement processes and bidding requirements under Republic Act No. 9184 or the “*Government Procurement Reform Act.*”

SEC. 10. ***Accreditation.*** – The PITC shall formulate accreditation process for Philippine manufacturers, exporters and contractors to qualify as suppliers of the Philippine products or services in countertrade transactions.

SEC. 11. ***Reportorial Requirements.*** – The foreign supplier or designated countertrade nominee shall submit quarterly and annual reports to PITC on the progress of their countertrade performance with a summary of transactions undertaken. The PITC and the foreign supplier or its designated countertrade nominee shall hold mid-year and yearly countertrade performance reviews and the

PITC shall submit to the Department of Trade and Industry a semi-annual status reports on the countertrade programs undertaken.

SEC. 12. ***Implementing Rules and Regulations.*** – Within ninety (90) days from the effectivity of this Act, the Secretary of Trade and Industry shall, in coordination with the President of the Philippine International Trading Corporation, issue the necessary rules and regulations for the effective implementation of this Act.

SEC. 13. ***Separability Clause.*** – If any provision or part of this Act is declared invalid or unconstitutional, the remaining parts or provisions not affected shall remain in full force and effect.

SEC. 14. ***Repealing Clause.*** – Executive Order No. 120 is hereby repealed. All other laws, decrees, orders, rules and regulations and other issuances, or parts thereof, which are inconsistent with the provisions of this Act are hereby repealed or amended accordingly.

SEC. 15. ***Effectivity.*** – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,