Executive Order No. 120 s. 1993
and the Implementing Rules and Regulations

On August 19, 1993, former President Fidel V. Ramos issued Executive Order No. 120 which established a national policy on countertrade in the Philippines.

A. Highlights of Executive Order No. 120

- Directs the National Government, its departments, bureaus, agencies and offices, including government-owned and controlled corporations, to adopt countertrade 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 US DOLLARS: ONE MILLION (US$1,000,000.00) and above 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.

- Designates the Philippine International Trading Corporation (PITC) as the implementing agency for this program on behalf of the ***Department of Trade and Industry***.

- Mandates the formulation and adoption of implementing rules and regulations (IRR) for this program by an inter-agency committee composed of the Department of Trade and Industry, Department of Finance, National Economic and Development Authority, and the Philippine International Trading Corporation.

B. Basic Features of the Implementing Rules and Regulations

On November 14, 1994, the aforesaid inter-agency committee issued the IRR of the E.O. 120 which outlined the fundamental procedures and guidelines for the Program:

- <u>Covered Importations:</u> Government importations and procurement of services from foreign suppliers entailing payment of at least US$ 1 Million and over or its equivalent in other foreign currency requires the adoption of countertrade.

- <u>Countertrade Integration:</u> Government offices whose importations are covered by the IRR will ensure that countertrade is required of their foreign suppliers.

- <u>Countertrade Level:</u> The countertrade obligation/commitment of foreign suppliers should not be less than 50% of the value of their supply contract with the government.

- <u>Countertrade Activities:</u> Acceptable forms of countertrade include counterpurchase, direct and indirect offsets, buy-back arrangements, debt for goods, and Build-Operate-Transfer schemes.

- Countertrade Agreement: Within 90 days from the award and signing of a supply contract with the Philippine government, the foreign supplier (or its designated assignee) signs a Countertrade Agreement with PITC outlining the terms and conditions of its countertrade performance.

- Countertrade Performance: The foreign suppliers are normally given two to three (2-3) years within which to fulfill the countertrade obligation.

- Countertrade Monitoring: The Philippine International Trading Corporation (PITC) handles the evaluation, administration and monitoring of countertrade programs and ensures compliance with countertrade obligations by foreign suppliers.

- Monitoring Fees (As per PITC BR No. 2002-01-06): The following fees are payable to PITC upon fulfillment of the countertrade obligation:
  - For capital goods imports: 1.5 % of the value of the countertrade obligation;
  - For commodities: 0.25% of the value of the countertrade obligation.

- Performance Guarantees/Penalties: Performance guarantees and penalties for non-performance shall be incorporated in the Countertrade Agreement to be signed between the supplier and PITC.

C. Role of PITC

PITC established in 1973 and re-organized in 1977 as a full service and self-sustaining international state trading organization under the Department of Trade and Industry, is the government office responsible for the management and administration of the countertrade program of the Philippine government with the following key responsibilities as provided in the IRR of E.O. s. 1993:

- Formulation of countertrade policies;

- Countertrade advisors/representative of government agencies;

- Evaluation of countertrade proposals of foreign suppliers;

- Negotiation, packaging and conclusion of countertrade contracts;

- Monitoring of countertrade transactions and performance.

PITC's Countertrade Group is administratively responsible for overseeing and carrying out the aforementioned tasks under the over-all supervision of the PITC President.

MALACANANG
MANILA

EXECUTIVE ORDER NO. 120

DIRECTING THE NATIONAL GOVERNMENT, ITS DEPARTMENTS, BUREAUS, AGENCIES AND OFFICES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, TO ADOPT COUNTERTRADE AS A SUPPLEMENTAL TRADE TOOL WITH RESPECT TO THE IMPORTATION OR PROCUREMENT OF FOREIGN CAPITAL EQUIPMENT, MACHINERY, PRODUCTS, GOODS AND SERVICES.

WHEREAS, under Section 13, Article XII of the 1987 Constitution, the State is mandated 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;

WHEREAS, the adoption of the policy on countertrade is aimed at compensating the foreign exchange expended for the importation or procurement of foreign capital equipment, machinery, products, goods and services by the national government, its agencies or offices including government-owned or controlled corporations, as well as to reciprocate for such importation or procurement through arranged counter exports of Philippine traditional or non-traditional products to the country of the supplier or any third country or through product buy back, offsets or investments;

WHEREAS, countertrade arrangements are expected to result in opening new markets for Philippine products and services, overcome quota and trade restrictions of other countries, and provide for technology transfer and industrial growth, particularly in strategic industries, such as energy, transport, infrastructure, telecommunications, and defense, as well as those listed under the Investments Priorities Plan and the Industry Modernization Program; and

WHEREAS, the adoption of the policy on countertrade by the public sector will spur economic development and help the Philippines achieve “newly-industrialized country” status by the year 2000.

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order;

Section 1. *Coverage.* All departments, bureaus, agencies, offices and instrumentalities, including government-owned or controlled corporations, are hereby directed to adopt countertrade 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 United States Dollar One Million (US$1,000,000.00) 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.

Section 2. *Definition of Terms*. For purposes of the Executive Order, "Countertrade" shall refer to any of the following arrangements:

(a) Counterpurchase -- also known as counter exports, parallel transactions or reciprocal trade, whereby the foreign supplier reciprocally commits to purchase Philippine goods or services, to be exported to the supplier's country or a third country;

(b) Product Buy Back -- whereby the foreign supplier of the equipment or machinery is paid for with the resultant product(s) or good(s) made or manufactured by such equipment or machinery;

(c) Offset – whereby the foreign supplier commits to introduce investments or technology transfer in the Philippines, or assist in establishing new industries or improving existing industries to generate or save foreign exchange or create increased employment, which may or may not related to the machinery, equipment, products or goods imported or services procured;

(d) Trade-for-Debt Swap -- whereby a loan or credit accommodation obtained by a government agency or government-owned or controlled corporation from a foreign government or creditor which has remained outstanding and unpaid is arranged to be settled in full or partially by way of sales of products, goods or services to be provided by a third party rather than by payment in foreign currency; or

(e) Any form or combination or variation of the above arrangements that results in the inflow to the country of foreign exchange or savings thereof, investments, training and technology transfer, grants for education, scientific, technological, environmental and related research programs or projects, which will enhance Philippine industrial or export competitiveness or contribute to the creation of new competitive industries, enhance existing industries or utilization of Philippine services or expertise by foreign clients, or in the reduction of public debt.

Section 3. *Implementing Agency*. The Department of Trade and Industry, through the Philippine International Trading Corporation, is hereby directed to coordinate with all government agencies and government-owned or controlled corporations in formulating and implementing particular strategies on countertrade or similar arrangements for any planned importation or procurement of foreign capital goods, equipment, machinery, products, goods and services, and in consultation to be made with the private sector.

Section 4. *Coordination by Government Agencies.* The government agency or government-owned or controlled corporation concerned shall closely coordinate with, and provide information on, any planned importation or procurement as well as countertrade efforts already undertaken, to the Department of Trade and Industry and the Philippine International Trading Corporation prior to actual importation or procurement, in order to assure the efficient implementation of this Executive Order.

Section 5. *Supply Base and Trading Network.* To achieve maximum implementation and dispersion of the benefits of Countertrade arrangements which may be concluded by government agencies or government-owned or controlled corporations, the Philippine International Trading Corporation shall maintain and enhance its supply base and trading network through constant and close coordination with various industry and export sectors to ensure the availability of adequate and acceptable products, goods and services which may be required under such countertrade arrangements.

Section 6. *Implementing Rules and Regulations.* The Department of Trade and Industry, National Economic Development Authority, Department of Finance, and the Philippine International Trading Corporation shall jointly promulgate the appropriate guidelines, rules and regulations to implement this Executive Order.

Section 7. *Repealing Clause*. The provisions of executive or administrative orders, rules, regulations and parts thereof inconsistent with this Executive Order are hereby repealed, amended or modified accordingly.

Section 8. *Effectivity.* This Executive Order shall take effect immediately.

DONE in the City of Manila, this 19th day of August in the year Our Lord, Nineteen Hundred and Ninety-Three.

(signed)
FIDEL V. RAMOS
President of the Philippines

By the President:

(signed)
TEOFISTO T. GUINGONA, JR.
Executive Secretary

Republic of the Philippines
DEPARTMENT OF TRADE AND INDUSTRY

RULES AND REGULATIONS IMPLEMENTING EXECUTIVE ORDER NO. 120 DATED AUGUST 19, 1993 ENTITLED "DIRECTING THE NATIONAL GOVERNMENT, ITS DEPARTMENTS, BUREAUS, AGENCIES AND OFFICES, INCLUDING GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS, TO ADOPT COUNTERTRADE AS A SUPPLEMENTAL TRADE TOOL WITH RESPECT TO THE IMPORTATION OR PROCUREMENT OF FOREIGN CAPITAL EQUIPMENT, MACHINERY, PRODUCTS, GOODS AND SERVICES."

1.0 PURPOSE

These rules and regulations are promulgated in compliance with section 6 of E.O. No. 120 dated 19 August 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.

2.0 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 counter exports, counter delivery, 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 transfer in the Philippines or assist in the establishment of new industries with export capacity and/or development and expansion of existing manufacturing, technological and industrial capabilities of the Philippines to generate/save foreign exchange and create/increase employment opportunities. These may or may not be related to the equipment, machinery, products, goods or services imported by the Philippines. If related, these are considered as **Direct Offsets,** and if not related, the same are considered as **Indirect Offsets.** Activities qualified as either Direct Offsets or Indirect Offsets are listed in **Annex "A"** hereof.

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-Backs are listed in **Annex "B"** hereof.

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 and/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 technological transfers, grants for educational, scientific, technological, environmental and related research programs or utilization of Philippine services or expertise by foreign clients or in the reduction of public debt. Such arrangements may also 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, products, goods, technology or services 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.

3.0 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 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 <u>total</u> 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. one-time shipment, partial shipment or by installment, etc.) and/or the manner of payment (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.

4.0 EXEMPTIONS

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

a) Those funded by outright donations or grant-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 propio upon the recommendation of PITC.

4.2 All exempted importations as enumerated in 4.1 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.

5.0 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) Formulate 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 exemption 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 procurements/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.

6.0 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 importation. In case an importation was not among those listed and submitted to the 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) of 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 on (i) on the importations/procurement which are subject to countertrade and (ii) 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 matter.

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 no 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 appraised/updated on all subsequent developments relative to the countertrade package developed for their respective procurement/importations and solicit their cooperation/assistance in these matters as necessary.

7.0 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 approval of such transfer/assignment by the government procuring office concerned and PITC. The selection of 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.

7.2 PITC shall coordinate and negotiate directly with the foreign supplier or its Countertrader on the requirements, processes and contracts/agreements necessary to implement the countertrade component of government importations/procurement covered by these rules. PITC shall execute the necessary countertrade contracts with the foreign supplier or its Countertrader. Such countertrade contract or agreement must be finalized and signed by the parties not later than ninety (90) days from the signing of the Supply or Sales Contract between the foreign supplier and the government procuring agency/office.

7.3 The following <u>standard</u> <u>terms</u> <u>and</u> <u>conditions</u>, among others, shall be incorporated in the countertrade agreements/contracts to be entered into by the foreign supplier or its Countertrader:

a) The level of countertrade obligations of the foreign supplier or its Countertrader shall be a minimum of 50% of the contract price for said importation/procurement.

b) The countertrade obligations must be carried out and fulfilled by the foreign supplier or its Countertrader not later than three years (with a grace period of two years) from the date of execution of the countertrade contract or agreement.

c) Penalties for non-performance of countertrade obligations shall be imposed on the foreign supplier or its Countertrader ranging from 5% - 100% of the unfulfilled countertrade obligations payable to PITC.

d) Performance or bank guarantees to secure payment of the penalties for non-fulfillment of countertrade obligations, in the form and manner acceptable to PITC, shall be submitted to PITC by the foreign supplier or Countertrader no later than thirty (30) days from the execution of the countertrade agreement.

The laws of the Philippines shall be the governing law of all countertrade contracts/agreements entered into pursuant to these rules.

8.0 COUNTERTRADE MONITORING AND CREDITING PROCEDURES

8.1 PITC shall institute and maintain monitoring and crediting procedures and rules to ascertain that countertrade obligations are performed in accordance with these rules and to credit the foreign supplier or its Countertrader for due performance thereunder, on a per transaction basis. In this regard, PITC is likewise authorized to impose and collect monitoring fees to meet costs for the management and operation of countertrade.

8.2 The foreign supplier or its Countertrader shall be required to submit certified true copies of supporting documents as may be required by PITC as evidence of each countertrade transaction undertaken, including but not limited to, the following:

a) Sales/export contracts and Commercial invoices;

b) Bills of Lading or similar transport documents;

c) Letters of Credit opened to Philippine manufacturers, contractors, or exporters;

d) Bank certification or similar receipts for payment/funds issued by a Philippine-based bank or Philippine beneficiary of a countertrade transaction;

e) Joint Venture or similar contracts/agreements relative to investments or offsets undertaken in the Philippines and SEC registration of new companies established pursuant to said arrangements;

f) Certification from the Philippine beneficiary of an offset, buy-back or related transaction that the said transactions were carried out fully by the foreign supplier or Countertrader;

g) Such other documents as may be required by PITC.

8.3 Failure to present required documents shall serve as sufficient basis to withhold or deny crediting any transaction against the countertrade obligations of the foreign supplier or the Countertrader.

8.4 The foreign supplier or its Countertrader shall be duly credited for performance of its countertrade/offset obligations on the basis of the following:

a) For Counterpurchase -- the FOB Invoice Value of each transaction; or 95% of the CIF Invoice Value if the CIF value is used; Provided that in either case, the local content value is at least 51%.

b) For Philippine Services -- the labor/manpower costs for such services, excluding the cost of equipment or materials used, as appearing in the invoice/contract.

c) For Offsets and related transactions -- the value of the investments, technology, grants, research, training, and related activities (as listed in Annex “B” hereof) introduced by the foreign supplier or its Countertrader as certified to by the direct Philippine beneficiary thereof, inclusive of the multipliers granted, if any, for said transactions.

d) For Buy-Back and Debt-for-Goods/Services -- the FOB invoice value (or 95% of CIF value) of the products or goods exported as a result of the buy-back or Debt for Goods, inclusive of the multipliers granted, if any, for such transactions, as certified to by the Philippine beneficiary of the plant or equipment (for buy-back) or the Philippine debtor (for Debt-for-Goods).

8.5 Multipliers ranging from 2x to 5x shall be imputed to the value of certain desired activities undertaken by the foreign supplier or its Countertrader in the final crediting of its countertrade/offset obligations. The final multiplier to be used for a particular transaction shall be agreed to by PITC and the foreign supplier or its Countertrader prior to undertaking said transaction.

9.0 ACCREDITATION OF PHILIPPINE MANUFACTURERS/ EXPORTERS

PITC shall accredited Philippine manufacturers/exporters and contractors nationwide who may wish to participate in countertrade transactions as suppliers of the Philippine products or services.

10.0 REPORTORIAL REQUIREMENTS AND REVIEW

10.1 The foreign supplier or its Countertrader shall submit quarterly and annual reports to PITC on the progress of their countertrade performance with a summary of transactions undertaken pursuant thereto.

10.2 PITC and the foreign supplier or its Countertrader shall hold midyear and yearly countertrade performance reviews.

10.3 PITC shall submit to the Department of Trade and Industry and the government procuring agency concerned a semi-annual status reports on the countertrade programs undertaken hereunder.

11.0 IMPLEMENTING GUIDELINES/CIRCULARS

PITC is hereby authorized to issue such circulars and guidelines as may be necessary to implement and administer these rules and regulations, including those intended to clarify or interpret the provisions hereof.

12.0 ADJUDICATION

12.1 Any dispute arising from the implementation of these rules shall be referred to PITC for initial settlement/action. Should any of the parties concerned not be satisfied with the action/decision of PITC, the matter may be referred to the Secretary of Trade and Industry for decision.

12.2 Where the dispute involves the countertrade contract/agreement itself, and a party thereto is not satisfied with the decision of the Department of Trade and Industry, it may bring the same for arbitration in accordance with the arbitration rules and procedures adopted by the parties as contained in the countertrade contract/agreement.

13.0 SEPARABILITY CLAUSE

If any provisions/sections of these rules should be declared invalid by a competent court of tribunal, the remaining provisions hereof, unaffected thereby, shall remain valid and binding.

14.0 RESPONSIBILITY/SANCTIONS

14.1 Compliance with these rules shall be a condition *sine qua non* for importations of all departments, bureaus, agencies, instrumentalities and offices of the National Government including government-owned and controlled corporations. The heads of all government departments, agencies, bureaus, offices and government-owned and controlled corporations shall ensure strict compliance of these rules and any violations thereof shall be dealt with in accordance with existing laws and regulations.

15.0 EFFECTIVITY

These rules and regulations shall take effect 30 days after its publication in two (2) newspapers of general circulation.

Done in Makati, Metro Manila, Philippines on 14 November 1994.

(signed)	*(signed)*
ROBERTO F. DE OCAMPO	**RIZALINO S. NAVARRO**
Department of Finance	Department of Trade and Industry
(signed)	*(signed)*
CIELITO F. HABITO	**JOSE LUIS U. YULO, JR.**
National Economic and Development Authority	Philippine International Trading Corporation

Annex “A”

OFFSETS

The following projects/activities in the Offset category, whether directly related **(Direct Offsets)** or not **(Indirect Offsets)** to the original importation/purchase of foreign equipment, machineries, products, technology and services by the Philippine government, include, but shall not be limited to any of the following:

1. Foreign direct investment in the local industries engaged in the manufacture of equipment, machinery, spare parts or components for the export market.

2. Technology transfer and/or skills training resulting in the (a) capability to locally manufacture, manage, design and/or produce the imported equipment, machinery, spare parts or components; (b) ability to provide required local logistic and maintenance support of an imported machinery or equipment.

3. Assistance in research and development activities which will enhance or improve the industrial, technological, or scientific capabilities of the Philippines.

4. Assistance in opening up or diversifying foreign markets for the utilization of Philippine services.

5. Investments in Philippine industries covered by the Investment Priorities Plan of the Board of Investment (BOI) and other eligible projects as may be prescribed/identified by the government from time to time.

6. Donations or grants in educational, scientific, technological and related research and development programs, public or private, which will enhance Philippine industrial/export competitiveness and address environmental concerns in support of sustainable development.

7. Introduction or development of environmental projects in support of sustainable growth for the Philippines.

8. Other transactions or activities similar to the above which will further enhance Philippine economic or industrial interests and improve the country’s international balance of payments, as may be approved by PITC.

Annex "B"

BUY – BACK ARRANGEMENTS

The following forms/variations of buy–back arrangements may be considered under these rules on a case-to-case basis:

1. Arrangements where the importation / purchase of equipment, machinery or technology is repaid with the resultant product.

2. Arrangements where the importation/purchase of equipment, machinery or technology is repaid with non-resultant but related products supplied by either the same importing company/agency/office or by another business enterprise in the same industry sector.

3. Arrangements where the importation/purchase of equipment, machinery or technology is repaid with unrelated products which are supplied by either the importing company/agency/office and/or another business enterprise in another industry sector.

4. Arrangements where the importation/purchase of equipment, machinery or technology is repaid with a mixture of resultant and non-resultant products by the importing company/agency/office and/or another business enterprise.

5. Arrangements where the foreign supplier of equipment or machinery is different from the foreign supplier of the technology; in which case, the foreign supplier of the equipment or machinery shall be the one to be linked with the buy-back commitment and the said supplier can also switch the obligation to buy-back the resultant products to a third party, which can be a trading company or another end-user.