

[**REPUBLIC ACT NO. 8479, February 10, 1998**]

AN ACT DEREGULATING THE DOWNSTREAM OIL INDUSTRY, AND FOR OTHER PURPOSES

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

CHAPTER I

GENERAL PROVISIONS

SECTION 1. *Short Title.* - This Act shall be known as the "Downstream Oil Industry Deregulation Act of 1998."

SEC. 2. *Declaration of Policy.* - It shall be the policy of the State to liberalize and deregulate the downstream oil industry in order to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply of environmentally-clean and high-quality petroleum products. To this end, the State shall promote and encourage the entry of new participants in the downstream oil industry, and introduce adequate measures to ensure the attainment of these goals.

SEC. 3. *Coverage.* - This Act shall apply to all persons or entities engaged in any and all the activities of the domestic downstream oil industry, as well as persons or companies directly importing refined petroleum products for their own use.

SEC. 4. *Definition of Terms.* - For purposes of this Act, the following terms are hereinbelow defined:

- a. *Basel Convention* shall refer to the international accord which governs the trade or movement of hazardous and toxic waste across borders;
- b. *Board* shall refer to energy Regulatory Board;
- c. *BOI* shall refer to the Board of Investments;
- d. *Crude Oil* shall refer to oil in its natural state before the same has been refined or otherwise treated, but excluding water, bottoms, sediments and foreign substances;
- e. *Dealer* shall refer to any person, whether natural or juridical, who is engaged in the marketing and direct selling of petroleum products to motorists, end users, and other consumers;

- f. *DOE* shall refer to the Department of Energy;
- g. *DOJ* shall refer to the Department of Justice;
- h. *Downstream Oil Industry (DOI) or Industry* shall refer to the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing and/or selling crude oil, gasoline, diesel, liquefied petroleum gas (LPG), kerosene, and other petroleum products;
- i. *Hauler* shall refer to any person, whether natural or juridical, engaged in the transport, distribution, hauling, and carriage of petroleum products, whether in bulk or packed form, from the oil companies and independent marketers to the petroleum dealers and other consumers;
- j. *LPG Distributor* shall refer to any person or entity, whether natural or juridical, engaged in exporting, refilling, transporting, marketing, and/or selling of LPG to end users and other consumers;
- k. *New Industry Participants* shall refer to new participants in a particular sub-sector of the downstream oil industry with investments and initial business operations commencing after January 1, 1994;
- l. *Person* shall refer to any person, whether natural or juridical, who is engaged in any activity of the downstream oil industry;
- m. *Petroleum* shall refer to the naturally occurring mixture of compounds of hydrogen and carbon with a small proportion of impurities and shall include any mineral oil, petroleum gas, hydrogen gas, bitumen, asphalt, mineral wax, and all other similar or naturally-associated substances, with the exception of coal, peat, bituminous shale and/or other stratified mineral fuel deposits;
- n. *Petroleum Products* shall refer to products formed in the course of refining crude petroleum through distillation, cracking, solvent refining and chemical treatment coming out as primary stocks from the refinery such as, but not limited to: LPG, naphtha, gasolines, solvent, kerosenes, aviation fuels, diesel oils, fuel oils, waxes and petrolatums, asphalt, bitumens, coke and refinery sludges, or such refinery petroleum fractions which have not undergone any process or treatment as to produce separate chemically-defined compounds in a pure or commercially pure state and to which various substances may have been added to render them suitable for particular uses: Provided, That the resultant product contains not less than fifty percent (50%) by weight of such petroleum products;
- o. *Singapore Import Parity (SIP)* shall refer to the deemed landed cost of a petroleum product imported from Singapore at a free-on-board price equal to the average Singapore Posting for the product at the time of loading;
- p. *Singapore Posting* shall refer to the price of petroleum products periodically posted by oil refineries in Singapore and reported by independent international publications; and

- q. *Wholesale Posted Price (WPP)* shall refer to the ceiling price of petroleum products set by the Board based on its duly approved automatic pricing formula.

CHAPTER II

LIBERALIZATION OF THE DOWNSTREAM OIL INDUSTRY AND PROMOTION OF FREE COMPETITION

SEC. 5. *Liberalization of the Industry.* - Any law to the contrary notwithstanding, any person or entity may import or purchase any quantity of crude oil and petroleum products from a foreign or domestic source, lease or own and operate refineries and other downstream oil facilities and market such crude oil and petroleum products either in a generic name or his or its own trade name, or use the same for his or its own requirement: *Provided*, That any person or entity who shall engage in any such activity shall give prior notice thereof to the DOE for monitoring purposes: *Provided, further*, That such notice shall not exempt such person or entity from securing certificates of quality, health and safety and environmental clearance from the proper governmental agencies: *Provided*, furthermore, That such person or entity shall, for monitoring purposes, report to the DOE his or its every importation/exportation: *Provided, finally*, That all oil importations shall be in accordance with the Basel Convention.

SEC. 6. *Tariff Treatment.* -

- a. Any law to the contrary notwithstanding and starting with the effectivity of this Act, a single and uniform tariff duty shall be imposed and collected both on imported crude oil and imported refined petroleum products at the rate of three percent (3%): *Provided, however*, That the President of the Philippines may, in the exercise of his powers, reduce such tariff rate when in his judgment such reduction is warranted, pursuant to Republic Act No. 1937, as amended, otherwise known as the "Tariff and Customs Code": *Provided, further*, That beginning January 1, 2004 or upon implementation of the Uniform Tariff Program under the World Trade Organization and ASEAN Free Trade Area commitments, the tariff rate shall be automatically adjusted to the appropriate level notwithstanding the provisions under this Section.
- b. For as long as the National Power Corporation (NPC) enjoys exemptions from taxes and duties on petroleum products used for power generation, the exemption shall apply to purchases through the local refineries and to the importation of fuel oil and diesel.

SEC. 7. *Promotion of Fair Trade Practices.* - The Department of Trade and Industry (DTI) and DOE shall take all measures to promote fair trade and prevent cartelization, monopolies, combinations in restraint of trade, and any unfair competition in the Industry as defined in Article 186 of the Revised Penal Code, and Articles 168 and 169 of Republic Act No. 8293, otherwise known as the "Intellectual Property Rights Law." The DOE shall continue to encourage certain practices in the Industry which serve the public interest and are intended to achieve efficiency and cost reduction, ensure continuous supply of petroleum products, and enhance environmental protection. These practices may include borrow-and-loan agreements, rationalized depot and manufacturing operations, hospitality agreements, joint tanker and pipeline utilization, and joint actions on oil spill control

and fire prevention.

The DOE shall monitor the relationship between the oil companies (refiners and importers) and their dealers, haulers and LPG distributors to help ensure the observance of fair and equitable practices and to ensure the enforcement of existing contracts: *Provided*, That the DOE shall conciliate and arbitrate any dispute that may arise with respect to the contractual relationship between the oil companies and the dealers, haulers and LPG distributors involving the dealers' mark-up, the freight rate in transporting petroleum products and the margins of LPG distributors for the protection of the public and to prevent ruinous competition: *Provided, further*, That the arbitration award of the DOE shall be subject to judicial review under existing law.

SEC. 8. *Program to Encourage the Entry of New Participants in the Industry.* - The DOE, the Department of Foreign Affairs (DFA) and the DTI shall jointly formulate and establish a program that will promote the entry of new participants in the Industry. Such program shall, among others, include a strategic international information campaign to be implemented through selected embassies and consular offices of the Philippines. This program shall commence implementation after three (3) months from the effectivity of this Act.

In this regard, the DOE shall provide a "Philippine Downstream Oil Industry Investment Guide" to new industry participants and prospective participants. This guide shall, among others, contain:

- a. An introduction to the Philippine Downstream Oil Industry and the government's unwavering commitment to deregulation;
- b. The entry requirements;
- c. Information on the benefits and incentives for new industry participants which shall specify: (i) all the incentives and benefits they can enjoy, and (ii) the procedural and substantive requirements needed for entitlement; and
- d. Such other information the DOE may deem necessary to promote the entry of new participants.

SEC. 9. *Incentives for New Investments.* - To the extent applicable, persons with new investments as determined by the DOE and registered with the BOI in refining, storage, marketing and distribution of petroleum products, shall be extended the same incentives granted to BOI-registered enterprises engaged in a preferred area of investments pursuant to Executive Order No. 226, otherwise known as the "Omnibus Investment Code of 1987."

Such incentives shall include:

1. Income tax holiday;
2. Additional deduction for labor expenses;
3. Minimum tax and duty of three percent (3 %) and value-added tax (VAT) on imported capital equipment;

4. Tax credit on domestic capital equipment;
5. Exemption from contractor's tax;
6. Unrestricted use of consigned equipment;
7. Exemption from the real property tax on production equipment or machineries;
8. Exemption from taxes and duties on imported spare parts; and
9. Such other applicable incentives under Article 39 of Executive Order No. 226.

Any provision of law to the contrary notwithstanding, the said incentives may be availed by persons with new investments for a period of five (5) years from registration with the BOI: *Provided, however,* That in the storage, marketing and distribution of petroleum products, only the investments of new industry participants shall be entitled to incentives provided in the said Code. As used herein, "marketing of petroleum products" shall include the establishment of gasoline stations.

For this purpose, the industry shall be included in the annual Investment Priorities Plan (IPP): *Provided,* That nothing herein contained shall preclude qualified persons or entities as provided under the "Omnibus Investments Code" from applying for or continue enjoying incentives and benefits under the said Code.

SEC. 10. *Promotion of Retail Competition.* - To achieve the social policy objective of fair prices, and facilitate the attainment of a truly competitive petroleum product market in the retail level, the DOE shall promote and encourage by way of information dissemination, networking and management/skills training, the active and direct participation of the private sector and cooperatives in the retailing of petroleum products through joint venture/supply agreements with new industry participants for the establishment and operation of gasoline stations: *Provided,* That the training herein shall include LPG retailing.

To this end, the DOE shall, in cooperation with the Technology and Livelihood Resource Center (TLRC) and Technical Education and Skills Development Authority (TESDA), coordinate with new industry participants and existing petroleum dealers' associations in the formulation and implementation of a two-fold program on management and skills training for the establishment, operation, and maintenance of gasoline stations.

Persons who successfully complete the two-fold program shall be entitled to government assistance being extended by government lending agencies, in the form of medium-to long-term loans with low interest rates and to the gasoline station training and loan fund provided hereunder, to serve as capital for the establishment and operation of gasoline stations.

For these purposes, there is hereby established a gasoline station training and loan fund with the initial amount of Three hundred million pesos (P300,000,000) to be provided by the Philippine Amusement and Gaming Corporation (PAGCOR) and administered by the DOE under a separate account.

Of this amount, two percent (2%) plus any additional funding shall be allocated for