



JOINT MEMORANDUM CIRCULAR NO. 001 .2023
Series of 2023

FOR : ALL CONCERNED REGISTERED BUSINESS ENTERPRISES (RBEs), INVESTMENT PROMOTION AGENCIES (IPAs), BUREAU OF CUSTOMS (BOC), AND DEPARTMENT OF FINANCE- REVENUE OFFICE (DOF-RO)

SUBJECT : GUIDELINES ON THE DETERMINATION OF NON-LOCAL AVAILABILITY OF CAPITAL EQUIPMENT, RAW MATERIALS, SPARE PARTS, OR ACCESSORIES UNDER PART II, RULE 2, SECTION 4(B)(3) OF THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF TITLE XIII OF REPUBLIC ACT (RA) NO. 8424, OTHERWISE KNOWN AS THE "NATIONAL INTERNAL REVENUE CODE OF 1997", AS AMENDED BY RA NO. 11534 OR THE "CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES (CREATE) ACT"

DATE : 10 May 2023

1.0 Legal Basis

Section 294(D) of the National Internal Revenue Code (NIRC) of 1997, as amended by the CREATE Act, provides that customs duty exemption on the importation of capital equipment, raw materials, spare parts, or accessories may be granted to registered projects or activities subject to the conditions of availment under Section 295(C) thereof.

Section 295(C) of the NIRC of 1997, as amended by the CREATE Act, provides that the customs duty exemption shall only apply to the importation of capital equipment, raw materials, spare parts, or accessories directly and exclusively used in the registered project or activity by RBEs subject to the condition that the items to be imported are not produced or manufactured domestically in sufficient quantity or of comparable quality and at reasonable prices.

Part II, Rule 2, Section 4(B)(3) of the IRR of the CREATE Act requires that, in compliance with the said condition, the Certificate of Non-Local Availability (CNLA) shall be secured from the Department of Trade and Industry (DTI).

Pursuant to Section 21 of the CREATE Act, the Secretary of Finance and the Secretary of Trade and Industry hereby promulgate these Guidelines.

2.0 Objective

This Joint Memorandum Circular (JMC) aims to facilitate the determination by IPAs that the capital equipment, raw materials, spare parts, or accessories for importation are not produced or manufactured domestically in sufficient quantity or of comparable quality and at reasonable prices, as provided under 295(C) of the NIRC of 1997, as amended by the CREATE Act and Part II, Rule 2, Section 4(B)(3) of its IRR.

3.0 Scope

Under Part II, Rule 2, Section 4(B)(3) of the IRR of the CREATE Act, all RBEs registered under the CREATE Act are required to secure the CNLA for their availment of the duty exemption on importation of capital equipment, raw materials, spare parts, or accessories, subject to the condition that the items to be imported are not produced or manufactured domestically in sufficient quantity or of comparable quality and at reasonable prices. RBEs granted duty exemption prior to the effectivity of the CREATE Act shall not be required to secure the CNLA from the concerned IPA, unless required under the IPA charter or existing laws prior to the effectivity of the CREATE Act.

4.0 Function of the IPA on the CNLA process

The IPA where the RBE is registered (concerned IPA) shall determine whether the items to be imported are not produced or manufactured domestically in sufficient quantity or of comparable quality and at reasonable prices.

Capital equipment, raw materials, spare parts, or accessories shall not be considered available in sufficient quantity if they cannot be made available to the qualified enterprises at the time needed or within a reasonable period.

In determining whether the quality is comparable, the test, among others, will be whether or not the registered activity will be adversely affected or the resulting product will be of lower quality, or the cost of operation will be increased.

In determining the reasonableness of the prices quoted by the domestic manufacturers, the concerned IPA may be guided by the import cost of such capital equipment, spare parts, raw materials, or accessories to be imported into the Philippines, which may include shipping costs and other incidental fees or charges, plus all applicable taxes and duties to be paid thereon, and a fifteen percent (15%) mark-up.

5.0 General Procedure

5.1 Where and when to file

The RBE shall file its request for the CNLA with the concerned IPA using the herein prescribed **CNLA Request Form (Annex A)** prior to its importation.

5.2 Documentary Requirements

The RBE shall attach the following documents to the duly filled **CNLA** Application:

- a. Copy of Purchase Order and/or Invoice, and copy of Packing List; and
- b. Fabrication drawing of the parts/components, if applicable.

5.3 Filing Fee

The concerned IPA may collect a corresponding filing fee in the amount not exceeding PhP1,500.00 per request, provided, that a separate request shall be filed for every purchase order or invoice.

The CNLA shall be non-transferable and may not be used by another RBE different from the applicant.

5.4 Procedure for Referral to Industry Associations or Local Manufacturers

To determine the local availability of the capital equipment, raw materials, spare parts, or accessories sought to be imported, the concerned IPA shall refer to the relevant industry association/s or local manufacturer/s posted on the DTI website, using the prescribed **Association Referral Letter (Annex B)**, for information on whether (i) the said items are locally manufactured or can be supplied by any of its member companies at comparable quality and reasonable price, and (ii) the volume being imported or required by the RBE can be supplied by the association members within the delivery period indicated by the foreign supplier.

For the purposes of these Guidelines, the failure of the relevant industry association/s or local manufacturer/s to provide the requested information within five (5) working days from the IPA referral shall be deemed that none of its members are locally manufacturing the said items or are manufacturing them but cannot match the RBE's required importation in terms of quality, quantity, price, and required delivery period. As such, the CNLA may be issued accordingly, which shall be used to satisfy the condition of non-local availability of the capital equipment, raw materials, spare parts, or accessories sought to be imported.

Nothing herein shall preclude the concerned IPA from denying an RBE's request for CNLA or the DTI from revoking an issued CNLA upon finding that the items covered therein are produced or manufactured domestically, in sufficient quantity, or of comparable quality, and at reasonable prices. Provided, that any revocation shall not affect the importation of items already ordered for shipment by virtue of the issued CNLA prior to the date of such revocation, subject to the provisions of Section 7.0 hereof.

5.5 Issuance of CNLA

Upon receipt of the required information from the relevant industry association/s or local manufacturer/s, the concerned IPA may, within three (3) working days therefrom, (i) issue the CNLA covering the items allowed to be imported; or (ii) notify the RBE of the denial of its request.

In case of the lapsing of the period referred to in 5.4 of these Guidelines, the concerned IPA shall issue the CNLA within three (3) working days from the lapse of the said period.

5.6 Forms

All forms under these Guidelines shall be prescribed by the DTI, in coordination with the FIRB Secretariat and IPAs.

5.7 Validity

The CNLA shall be valid for one (1) year from the date of issuance, unless sooner revoked by the concerned IPA or the DTI.

6.0 Submission of reports to the DTI- Competitiveness Bureau (CB)

All concerned IPAs shall submit to the DTI-CB a monthly Report on the CNLAs issued in the prescribed format, IPA report on CNLA issued (**Annex C**), every 5th day of the following month.

7.0 Revocation of the CNLA by the DTI

In case the CNLA is issued in violation of these Guidelines, the DTI may, upon due notice to the concerned IPA and DOF-RO, cancel the CNLA and endorse to the BOC for assessment of tax and customs duty and other applicable penalties. Provided, that the revocation of the issued CNLA shall not be applied retroactively if such will be prejudicial to the RBE who, in good faith, relied on the validity of the issued CNLA prior to its reversal.

Any official or employee of the concerned IPA who willfully or knowingly issue a CNLA in violation of these guidelines shall be subject to administrative and/or criminal penalties imposable under existing laws.

8.0 Transitory Provision

Pending the issuance and adoption by all IPAs of the Rules on the Issuance of Certificate of Authority to Import (hereinafter referred to as "CAI Rules") pursuant to the CREATE Act and its IRR, the following shall apply:

8.1 For projects registered under the CREATE Act, the CNLA requirement under these Guidelines shall be implemented by **01 July 2023**. As such, in the processing of Tax

Exemption Indorsement (TEI), the DOF-RO and the BOC shall not require from RBEs the CNLA until 30 June 2023; and

8.2 For projects registered prior to the effectivity of the CREATE Act, all IPAs shall continue to process CAI or List of Importables (LOIs) pursuant to their existing rules; *Provided*, that where the condition for non-local availability is required, the concerned IPA shall, pursuant to its existing process and requirements, indicate in the CAI or LOI, whichever is applicable, that the capital equipment, raw materials, spare parts, or accessories to be imported are not produced or manufactured domestically in sufficient quantity or of comparable quality and at reasonable prices. As such, in the processing of TEI, the DOF-RO and BOC shall no longer require from RBEs a separate CNLA.

9.0 Effect of the implementation of the CAI Rules

Upon the implementation of the CAI Rules, a separate CNLA will no longer be required for the availment of the customs duty exemption on the importation of capital equipment, raw materials, spare parts, or accessories by RBEs; *Provided*, that the concerned IPA shall, pursuant to these Guidelines, determine the non-local availability of the said importations at the time of filing by the RBE with the concerned IPA of its application for CAI; *Provided further*, that the concerned IPA shall, upon compliance with the procedure provided in these Guidelines, indicate in the CAI that the capital equipment, raw materials, spare parts, or accessories to be imported are not produced or manufactured domestically in sufficient quantity or of comparable quality and at reasonable prices; *Provided finally*, that the CNLA for said importation is deemed integrated into the CAI; as such, in the processing of TEI, the DOF-RO and BOC shall no longer require from RBEs a separate CNLA.


10.0 Repealing Clause. All existing rules and regulations or parts thereof that are inconsistent with the provisions of this JMC are hereby amended accordingly.

11.0 Effectivity. This JMC shall take effect immediately upon publication in a newspaper of general circulation. Three (3) copies hereof shall be filed with the Office of the National Administrative Register, University of the Philippines Law Center, Diliman, Quezon City pursuant to Presidential Memorandum Circular No. 11 dated 09 October 1992.


BENJAMIN E. DIOKNO
Secretary of Finance

JUN 06 2023




ALFREDO E. PASCUAL
Secretary of Trade and Industry

