

**Committee on Market Access
Council for Trade in Goods**

Original: Spanish

**STATEMENT BY THE REPUBLIC OF PANAMA ON THE
APPLICATION OF ARTICLE V OF THE GATT TO
PANAMA CANAL OPERATIONS**

Statement by Panama

The following statement was made by the delegation of Panama at the meeting of the Committee on Market Access on 23 September 2002 with the request that it be circulated.

The Panama Canal is a waterway which provides interoceanic transport services to ships of all nations. It is administered by the Panama Canal Authority (PCA), an autonomous legal entity of the Panamanian State, established under the Political Constitution of the Republic of Panama and exclusively responsible for the administration, operation, conservation, maintenance and modernization of the Panama Canal and related activities. The PCA possesses and has the right to manage its own capital.

The PCA charges for all of its services, both the interoceanic transport of vessels and other related services, on the basis of prices established taking both the market and the costs of providing such services into consideration. These prices are applicable to both Panamanians and foreigners without discrimination of any kind.

Upon accession to the Marrakesh Agreement, in Schedule CXLI, Part II, on its specific commitments on services, the Republic of Panama established in its horizontal commitments, which are applicable to all services, unbound market access in the geographical areas covered by the Panama Canal Treaties. That is to say, it has no specific obligation to provide services through the Panama Canal.

The Republic of Panama offers other means of interoceanic transport for goods, such as rail (*Ferrocarril de Panamá* - Panamanian railways) and road transport using existing tracks and routes. The Government of Panama guarantees freedom of transit and transshipment of goods, in full compliance with Article V of the GATT, for all transport services provided by the PCA and Panamanian railways as well by road freighters and ports.

As established in the interpretative notes to paragraphs 3, 4 and 5 of Article 33 of the Havana Charter, which correspond to Article V of the GATT, "the word 'charges', as used in the English text of these paragraphs, shall not be deemed to include transportation charges" (cf., Havana Reports, page 72, paragraph 13). Such charges are, in any case, covered by Article III.2 and III.4 which

¹ At the request of Panama, this document is also being circulated in connection with agenda item 5 of the Council for Trade in Goods meeting of 1-2 October 2002 entitled "New Panama Canal Transit Tolls – Communication from Ecuador (G/C/W/418)".

require strict adherence to the principle of national treatment, with which all of the means of transport available for the transit of goods across the Republic of Panama fully comply.

1. Could Panama provide information on the recent decision of the Panama Canal Authority to raise the Canal tolls?

The Panama Canal is an industrial complex which has been operating for over 88 years and which requires a strict maintenance and investment programme and, if it is to continue to provide an efficient and safe service for international trade in the medium and long term, financial planning in which price structure is a cornerstone for providing the funds needed for ongoing modernization and improvement.

The Panama Canal Authority, an independent legal entity of the Panamanian State, established under the Political Constitution of the Republic of Panama and exclusively in charge of the administration, conservation, maintenance and modernization of the Canal, has furnished extensive explanations of the change in its price structure to government representatives from Ecuador and other interested countries which participated in the consultations and public hearing which took place from 7 June to 19 July 2002. This information, which covered the legal and regulatory process applicable to the toll increase, was also published in the Panama Canal Register on 7 June 2002, as well as in the local press and on the Canal web site.

Attention should also be drawn to the fact that the Constitution of the Republic of Panama clearly states that 'The tolls and rates established by the Authority shall take into consideration the conditions of safe, uninterrupted, efficient, competitive and profitable Canal service'. This means that Canal tolls and other charges should provide an appropriate level of profitability and sufficient resources to ensure the viability and competitiveness of the Canal in the medium and long term.

For the information of the WTO Committee on Market Access, we hereby attach the documentation which is available on the Canal web site and was distributed to those who attended the public hearing.

2. What is the rationale for charging new, differentiated tolls depending on the vessel's charge tonnage?

3. Why will vessels with smaller charge tonnages pay a higher toll rate?

Replies to questions 2 and 3:

The toll system was designed long before the Canal opened and its main purpose was to recover the investment and operating costs. The system was designed so that total costs could be distributed proportionally between the vessels transiting the Canal². In its 88 years of operation, the Panama Canal has increased its tolls eight times by a cumulative total of 114.2 per cent. The original toll charged for vessels in 1914 was \$1.20 per net ton and the current rate is \$2.57 per net ton.

The recent changes to the toll system maintain the same vessel measurement system; however, they establish a differentiated scale based on vessel size, whereby a higher rate is payable on the first 10,000 tons, a slightly lower rate on the next 10,000 tons and a still lower rate on all tons thereafter. This change is based on the fact that, from the point of view of costs, Canal operations require a vast amount of fixed assets, which are virtually identical for all vessels, irrespective of size. The graduated price schedule guarantees better distribution of transit tolls to cover fixed costs. The

² The toll for a vessel is generally calculated on the basis of its volumetric capacity, measured in net tons of 100 cubic feet.

decision to establish this kind of differentiation corresponds to current operating conditions and the services provided by the enterprise administering the Panama Canal.

The size of the vessels used for international trade is determined by the shippers according to their own interests and is dependent upon factors which are completely beyond the control of the Canal.

Other international canals, such as the Suez Canal, have historically used a differentiated transit toll structure based on vessel type and size, as the following table illustrates:

SUEZ CANAL AUTHORITY
Transit tolls applied as of 1/1/02

	Type of vessel	Net tonnage (Laden / Ballast)											
		First 5,000 tons		Next 5,000 tons		Next 10,000 tons		Next 20,000 tons		Next 30,000 tons		Balance of tonnage	
		L	B	L	B	L	B	L	B	L	B	L	B
1	<ul style="list-style-type: none"> Crude oil tankers Combined carriers of crude oil only 	6.49	5.52	3.62	3.08	3.25	2.77	1.40	1.19	1.40	1.19	1.21	1.03
2	<ul style="list-style-type: none"> Tankers carrying petroleum products Combined carriers of petroleum products Combined carriers with more than one kind of cargo 	6.75	5.52	3.77	3.08	3.43	2.77	1.93	1.19	1.93	1.19	1.93	1.03
3	<ul style="list-style-type: none"> Bulk carriers Combined carriers of dry bulk cargo only 	7.21	6.13	4.14	3.52	2.97	2.53	1.05	0.90	1.00	0.85	1.00	0.85
4	<ul style="list-style-type: none"> Other liquid bulk carriers LNG (light natural gas) carriers Chemical carriers Combined carriers of other liquid bulk 	7.50	6.38	4.18	3.56	3.81	3.24	2.68	2.28	2.68	2.28	2.68	2.28
5	<ul style="list-style-type: none"> LPG (liquid petroleum gas) carriers 	6.75	5.75	3.77	3.21	3.43	2.92	2.42	2.06	2.42	2.06	2.42	2.06
6	<ul style="list-style-type: none"> Container vessels Vehicle carriers 	7.21	6.13	4.10	3.49	3.37	2.87	2.42	2.06	2.42	2.06	1.83	1.56
7	<ul style="list-style-type: none"> Special floating units 	7.21	-	4.14	-	3.77	-	2.63	-	2.63	-	2.63	-
8	<ul style="list-style-type: none"> Other vessels 	7.21	6.13	4.14	3.52	3.77	3.21	2.63	2.24	2.63	2.24	2.63	2.24

Note I: Chemical/oil tankers in ballast are charged the same rate as oil tankers.

Note II: Currencies accepted for the payment of transit tolls.

4. What services have traditionally been covered by the transit tolls paid?

5. Which are the services that will not be covered by the toll under the new structure?

Historically, the Canal tolls were calculated to cover most of the fixed costs of vessel transit. Part of the services provided for vessels transiting the Canal are not covered by tolls, rather by charges specifically designed for each service, the uses of which depend on the requirements of each individual vessel. These include the measurement service, transit reservation system, pilotage, channel fee, transiting vessel inspection service, security charge for transiting vessels, chemical inspection services, sanitary inspection service, moorage and anchorage, shifting berth and wharfage, salvage service, embarkation and disembarkation at locks, shuttle advisor service, public relations service, provisions for employees aboard vessels, on-line vessel information service, small vessels and launch service.

Under the new structure, the use of towing locomotives is classified as a related service for which specific rates are charged according to their individual use by each vessel. This will enable the costs of locomotives to be established according to their level of use. Like tugboat and line handler services, locomotive services have evolved in keeping with vessel configuration and size and their costs have increased significantly over the years. The first towing locomotives, purchased in 1914, cost \$13,000 each; the fleet was replaced in 1965 at a cost of \$115,000 per unit and is currently being replaced once again (100 locomotives) at a cost of \$2.1 million per unit which, coupled with the

replacement of the entire lock tow track and energy supply system, brings total investment to over \$350 million. The vessel positioning system is also the greatest consumer of electric power in the whole Canal system.

The following table gives examples of charges for the use of locomotives:

Ranges per vessel size (Displacement tons)	Locomotives x Cables*	Rate (\$)
(1) Length of over 38.10 metres (125.00 feet) but not exceeding 152.40 metres (500.00 feet), with up to 12,000 displacement tons	4 x 4	800
(2) Length of over 38.10 metres (125.00 feet) but not exceeding 173.74 metres (570.00 feet), with 12,000 or more but less than 22,000 displacement tons	4 x 6	1,200
(3) Length of over 152.40 metres (500.00 feet) but not exceeding 182.88 metres (600.00 feet), with 22,000 or more but less than 30,000 displacement tons	4 x 8	1,600
(4) Length of over 182.88 metres (600.00 feet) or 30,000 or more displacement tons	6 x 12	2,400
(5) Length of 274.33 metres (900.00 feet) or more, or exceeding 259.08 metres (850.00 feet) for bulk carriers and tankers, and over 10.97 metres (36.00 feet) in draught	8 x 16	3,200
* On a basis of \$ 200.00 per cable		

6. Does Panama consider the rates being collected under the new structure to be commensurate with the services provided and consistent with Article V of the GATT 1994?

Panama considers that the maritime transport service rates charged by the PCA are fair and in conformity with WTO rules and the other international treaties governing Panama Canal operations.

The GATT provisions are not incompatible with the price increases recently established by the Panama Canal insofar as the new structure is applicable to all vessels which transit the Canal irrespective of flag, route, type of cargo, value of cargo, country of origin or destination.

CANAL REGISTER

RESOLUTION No. ACP-JD-RM-02-75

(of 30 May 2002)

"Approving the proposal to increase tolls, change the toll system and establish a new fee for the use of locomotives in Canal transit"

**THE BOARD OF DIRECTORS
OF THE PANAMA CANAL AUTHORITY**

WHEREAS:

The Canal Administration has submitted a proposal to increase tolls, change the toll system and establish a new fee for the use of locomotives in Canal transit for consideration by the Board of Directors.

The proposal contains a rational justification of the grounds for and factors taken into consideration in its formulation, in accordance with Panama Canal Authority Agreement No. 4 of January 7, 1999 regulating the establishment of tolls, fees and tariffs for the transit of vessels through the Canal and ancillary services.

The Board of Directors is in agreement with the contents of the proposal and considers that it should be processed as appropriate, pursuant to the law and applicable regulations.

HEREBY RESOLVES:

FIRST: To approve the proposal submitted by the Canal administration to increase tolls, change the toll system and establish a new fee for the use of locomotives in Canal transit.

SECOND: To order the initiation of the public consultation and public hearing process established by law, by publication in the Canal Register of the notice of the proposal, in accordance with Annex I of this Resolution.

THIRD: To designate the following members of the Board of Directors as members and officers of the Committee responsible for conducting the consultation and public hearing process:

Ricardo Martinelli Chairman
Emanuel González Revilla Vice-Chairman
Eloy Alfaro
Moisés Mizrachi
Guillermo Elías Quijano
Abel Rodríguez

FOURTH: Mr Alberto Alemán Zubieta, the Administrator of the Panama Canal Authority, shall act as Committee Secretary.

AUTHORITY: Article 79 of Law No. 19 of 1997 and Panama Canal Authority Agreements Nos. 4 and 7.

FOR NOTIFICATION AND ENFORCEMENT

Ricardo Martinelli B.
Minister for Canal Affairs

Diógenes de la Rosa A.
Secretary

Annex 1**PANAMA CANAL AUTHORITY****PROPOSAL FOR A TOLL INCREASE, CHANGES IN THE TOLL SYSTEM AND
ESTABLISHMENT OF A NEW FEE FOR THE USE OF LOCOMOTIVES****THE BOARD OF DIRECTORS
OF THE PANAMA CANAL AUTHORITY****HEREBY PROMULGATES:****1. A PROPOSAL FOR TOLL CHANGES**

The Board of Directors of the Panama Canal Authority, meeting in extraordinary session, approved Resolution No. ACP-JD-RM-02-75 of 30 May 2002, which contains the proposal for a toll increase, changes in the toll system and the establishment of a new fee for the use of locomotives by vessels transiting the Canal. This proposal is available to interested parties as of the date of this publication.

2. ESSENCE OF THE PROPOSED CHANGE

The proposed change consists of an increase in tolls in accordance with the structure detailed in paragraph 2.1 and the establishment of a new fee for the use of locomotives by vessels transiting the Panama Canal, to be charged according to the structure detailed in paragraph 2.2.

2.1 The proposal involves a differentiated toll system based on vessel PC/UMS tonnage. The proposed system establishes a progressively decreasing scale of charges whereby a vessel's first 10,000 PC/UMS tons will be charged at a higher rate, the next 10,000 PC/UMS tons at a slightly lower rate and the remaining PC/UMS tons at a still lower rate. The proposed structure maintains the concept of toll differentiation between laden and ballast vessels. Non-commercial vessels will continue to be charged on the basis of displacement tons. The proposed toll system also defines the main market segments served by the Canal and identifies them by vessel type. Minimum toll vessels are exempt from these changes and will continue to be charged at the existing rate. The overall toll increase, changes in the toll system and a tabular presentation thereof are given below:

PROPOSED TOLL STRUCTURE

Type of vessel	A C T U A L		P R O P O S E D *					
	Laden	Ballast	First 10,000 tons (PC/UMS)		Next 10,000 tons (PC/UMS)		Remaining tons (PC/UMS)	
			Laden	Ballast	Laden	Ballast	Laden	Ballast
General cargo	\$2.57	\$2.04	\$2.96	\$2.35	\$2.90	\$2.30	\$2.85	\$2.26
Refrigerated cargo	\$2.57	\$2.04	\$2.96	\$2.35	\$2.90	\$2.30	\$2.85	\$2.26
Dry bulk	\$2.57	\$2.04	\$2.96	\$2.35	\$2.90	\$2.30	\$2.85	\$2.26
Tankers	\$2.57	\$2.04	\$2.96	\$2.35	\$2.90	\$2.30	\$2.85	\$2.26
Container ships	\$2.57	\$2.04	\$2.96	\$2.35	\$2.90	\$2.30	\$2.85	\$2.26
Vehicle carriers	\$2.57	\$2.04	\$2.96	\$2.35	\$2.90	\$2.30	\$2.85	\$2.26

	A C T U A L		P R O P O S E D *					
Type of vessel	Laden	Ballast	First 10,000 tons (PC/UMS)		Next 10,000 tons (PC/UMS)		Remaining tons (PC/UMS)	
			Laden	Ballast	Laden	Ballast	Laden	Ballast
Passenger ships	\$2.57	\$2.04	\$2.96	\$2.35	\$2.90	\$2.30	\$2.85	\$2.26
Others	\$2.57	\$2.04	\$2.96	\$2.35	\$2.90	\$2.30	\$2.85	\$2.26
Displacement	\$1.43/ displacement ton		\$1.64/displacement ton					
* Minimum tolls remain unchanged.								

2.2 A fee for the use of towing locomotives is proposed on the basis of the number of cables required by vessels to transit through the locks, at a rate of \$200.00 per cable. For the purpose of estimates and calculations, the tariff structure per cable/locomotive is shown below:

CHARGES FOR THE USE OF LOCOMOTIVES

Ranges per vessel size (Displacement tons)	Locomotives x Cables*	Rate (\$)
(1) Length of over 38.10 metres (125.00 feet) but not exceeding 152.40 metres (500.00 feet), with up to 12,000 displacement tons	4 x 4	800
(2) Length of over 38.10 metres (125.00 feet) but not exceeding 173.74 metres (570.00 feet), with 12,000 or more but less than 22,000 displacement tons	4 x 6	1,200
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(5) Length of 274.33 metres (900.00 feet) or more, or exceeding 259.08 metres (850.00 feet) for bulk carriers and tankers, and over 10.97 metres (36.00 feet) in draught	8 x 16	3,200
* On a basis of \$ 200.00 per cable		

3. INVITATION TO PARTICIPATE IN THE PUBLIC CONSULTATION AND HEARING

Interested parties are invited to participate in the consultation process and public hearing to afford them an opportunity to become involved in the toll review process and establishment of a new fee for the use of locomotives by vessels transiting the Panama Canal. The following dates have been set:

3.1 **Public consultation:** A thirty-five (35) calendar-day public consultation period shall commence on the date of this publication and expire on the twelfth (12) day of July 2002.

3.2 **Public hearing:** A public hearing shall be held on the nineteenth (19) day of July 2002 in the place indicated in paragraph six (6) below.

4. FORM OF PARTICIPATION OF INTERESTED PARTIES

Interested parties may participate in the public consultation and hearing in accordance with the following rules:

4.1 The consultation period is open as of the publication date of this notification. Interested parties may submit data, opinions and statements in writing, in either English or Spanish, which must be received within thirty-five (35) calendar days. The deadline is the twelfth (12) day of July 2002.

4.2 All persons who take part in the consultation process described in paragraph 4.1 above may participate in the public hearing, to be held on the date indicated in paragraph 3.2, either directly or through duly accredited representatives, provided that they have given written notification of their intention of attending the hearing during the consultation period. This notice shall be sent to one of the addresses indicated below and shall state the name and address of the interested party and capacity in which he/she is acting. Notices of participation in the public hearing must be received in writing, in either English or Spanish, no later than the twelfth (12) day of July 2002; the recorded date and time of receipt shall determine the order in which interested parties participate in the hearing.

5. REQUEST FOR AND SUBMISSION OF INFORMATION

5.1 Persons interested in participating in the consultation process and public hearing may access an electronic copy of the proposal, available in both English and Spanish, on the Canal Authority Web site (www.pancanal.com) or request a copy in person from the Department of Corporate Planning and Marketing, located in the Canal Administration Building in Balboa, by fax at (507) 272-3077 or by mail from either of the addresses indicated in paragraph 5.4.

5.2 Persons wishing to submit comments, opinions, information or arguments during the consultation period shall do so in writing, in either English or Spanish, in person or by courier or mail to arrive no later than the date established in paragraph 4.1. Submissions by fax or electronic mail will not be accepted.

5.3 Persons interested in participating in the public hearing shall indicate their interest in writing, in either English or Spanish, using any of the methods mentioned in the above paragraph and by the deadline established in paragraph 4.2. The date and time of receipt of the notification shall be recorded in the receiving office to determine the order in which interested parties make their respective presentations on the day of the hearing. Notifications sent by fax or electronic mail will not be accepted.

5.4 Addresses to send the above-mentioned documentation:

In person or by courier in Panama:

Autoridad del Canal de Panamá
Propuesta de Incremento de Peajes 2002
Edificio de la Administración
Departamento de Planificación Corporativa y Mercadeo
Balboa, Ancón, República de Panamá

or

By mail in the United States of America:

Panama Canal Authority
Toll Increase Proposal 2002
ACP-CP P.O. BOX 025513
Miami, FL 33102-5513

6. PLACE AND TIME OF THE HEARING

The public hearing shall be held in the auditorium of the Ascanio Arosemena Training Center, Balboa, Republic of Panama, and shall begin at 9:00 a.m.

7. PUBLIC HEARING PROCEDURE

A Committee made up of members of the Panama Canal Authority Board of Directors has been designated to conduct the consultation and public hearing:

Ricardo Martinelli B. Chairman
Emanuel González Revilla Vice-Chairman
Eloy Alfaro
Moisés Mizrahi
Guillermo Elías Quijano Jr.
Abel Rodríguez

The Secretary designated by the Committee shall be the Administrator, Mr Alberto Alemán Zubieta.

7.1 The Committee shall examine all information duly and properly submitted relating to the comments, data and information provided by interested parties during the consultation process.

7.2 The Committee shall commence the public hearing on the date and at the time and place established. The Committee Chairman shall inform participants that the purpose of the hearing is to hear arguments in favour of and against the proposal.

7.3 The Committee Chairman shall announce the order in which participants are to make their presentations, in accordance with paragraph 4.2 of this document, and open the proceedings forthwith.

7.4 Participants at the public hearing shall be called upon individually to make their statements and express their points of view on the proposal for a maximum of five minutes. The Committee shall consider and decide, on a case-by-case basis, whether it deems it appropriate for this time to be extended and shall inform the participants of their decision.

7.5 The purpose of such individual participation is merely expository; no debates or questions and answers shall therefore be permitted either between Committee members and participants or amongst participants.

7.6 Committee members shall hear the testimonies from and statements by the interested parties on the proposed changes.

7.7 Following the public hearing, the Committee shall analyse the documentation submitted and statements made by the participants and present, within a reasonable period of time, a report to the Board of Directors on the proceedings, together with its recommendations.

PANAMA, REPUBLIC OF PANAMA, ON THE SEVENTH DAY OF JUNE, TWO THOUSAND AND TWO (7 JUNE 2002).
