

**NEW PANAMA CANAL TRANSIT TOLLS  
STATEMENT BY THE PERMANENT REPRESENTATIVE OF ECUADOR,  
AMBASSADOR ALFREDO PINOARGOTE, AT THE MEETING  
OF THE COUNCIL ON TRADE IN GOODS, 2 OCTOBER 2002**

The following communication, dated 2 October, has been received from the Permanent Mission of Ecuador.

As we stated in the Committee on Market Access on 23 September last, this topic is vitally important to the WTO and its Members in the context of trade facilitation under Article V of the GATT. Document G/C/W/421 contains Panama's replies to Ecuador in the aforementioned Committee and I consider it pertinent to make some comments and to point out some of the trade implications of this matter.

I would like first to refer to the invitation extended by Panama in its statement to the Committee on Market Access to use other means of inter-ocean transportation on its territory such as rail or road, and to recall our right to use the Canal, in keeping with Panama's international obligations under the Torrijos-Carter Treaties and Article V of the GATT. Land transportation was preferred when there was no inter-ocean canal and before Article V of the GATT guaranteeing "the routes most convenient for international transit" came into existence.

I should like to state the following with respect to Panama's replies:

(1) Regarding the autonomy of the Canal Authority, Article 310 of the Constitution of the Republic characterizes it as having legal personality under "public law". Article 312 establishes a board of directors composed of 11 members. The presiding member is appointed by the President of the Republic with the rank of Minister of State, another member is appointed by the Legislative Assembly, and nine are proposed by the President of the Republic and ratified by the Legislative Assembly.

Article 313 of the Constitution prescribes that the board of directors shall set the tolls "subject to final approval by the Cabinet Council". Under Article 314, the budget of the Canal Authority and the transfer of any surplus to the "National Treasury" must be approved by the Cabinet Council and the Legislative Assembly. Lastly, Article 315 stipulates that the Canal Authority "shall make annual payments to the Panama National Treasury per Panama Canal net ton". This is obviously a very special kind of autonomy, given the direct links with the Government.

(2) With respect to differentiated tolls, which are the crux of the matter, Panama states: "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 Canal". This is true, and so much so that the problem lies precisely in the fact that this design has been substantially altered under the new, differentiated toll structure. The Canal Administrator, Mr Alberto Alemán, himself acknowledged

this rather emphatically in remarks made on 19 July and available on the Panama Canal Authority's Internet site, when he said: "The model replaces the one in force since the opening of the Canal and differs conceptually from that applied by the previous United States administration, which operated the Canal on the break-even principle, without making a profit. The Constitution of Panama provides that as the country's most strategic economic resource, the Canal must be profitable in order to promote the social development of all Panamanians". But the fundamental issue is that the previous system was both efficient and profitable, as can be seen from a review of the Canal's accounting records. Therefore, it is one thing to generate reasonable revenue as permitted under Article V of the GATT, and quite another, entirely unacceptable thing to impose an onerous and undue burden on world trade.

The reply concerning the new toll structure was: "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." Yet smaller vessels are being penalized with the highest rates. How can this contradiction and inconsistency be explained?

Regrettably, there is no acceptable answer as to why this toll is not commensurate with cost, in accordance with Article V of the GATT.

(3) As for the services that have traditionally been covered by the tolls and those that are not covered under the new toll structure, Panama lists 18 in its reply, ranging from inspection of vessels in transit to public relations service. All these 18 services have been payable separately since 2000, although they had been covered by the toll under the previous Canal administration. Mr Chairman, the situation gives cause for concern, considering that the Canal Administrator, Mr Alberto Alemán Zubieta, said on 19 July: "The considerations underlying the adoption of the new rate structure included the country's need for users to recognize the value of the route, and to derive maximum benefit from the natural resource most crucial to the nation's social and economic advancement. It was likewise suggested that it was desirable to adopt a structure based on the utilization and real value of the water resource, and mention was also made of the principles of self-determination and sovereignty whereby Panama could fully enforce its rights regarding the management of the Canal, including any decision on tolls".

These remarks were made after a hearing with users, including representatives of the private and public sectors of several WTO Members, where under the relevant rules, they were accorded five minutes in which to deliver their statements, with no questions or discussion allowed. They had voiced their objections to the new toll system, though these were not taken into account, considering that the Canal Administrator adduced domestic political considerations that have little bearing on autonomous management in full compliance of international obligations. This is particularly relevant in the light of section 3.4 (Basic obligations), fourth subparagraph of document G/C/W/408 prepared by the Secretariat for this meeting and which concludes in regard to charges for free transit: "The general principle therefore is that transit traffic shall not be a source of fiscal revenue".

For the time being, I would not wish to expand on the implications that will arise for international trade through "cascading" that will drive up the shipping freight and import and export costs of many WTO Members in the Americas, Asia and in Europe. Neither will I dwell on the strangely coincidental effect on Ecuador's banana exports with which Panama is trying to compete and which use the vessels unreasonably penalized by a toll incommensurate with costs, and when it is not the small vessels that are generating the need for new investments in the Canal.

This topic warrants more in-depth and thorough study, and I would therefore be grateful if this statement could be circulated to Members along with the one containing the viewpoints of the Federation of Chambers of Commerce of Ecuador. It would also be appreciated if the Secretariat could prepare a report on the past and present structure of the Panama Canal toll system, as this would

furnish objective information conducive to a dispassionate assessment of the situation and to this Council's further study of a topic of such capital importance to the facilitation of world trade.

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