

WORLD TRADE ORGANIZATION

G/SCM/Q3/HND/8

24 June 2002

(02-3468)

Committee on Subsidies
and Countervailing Measures

Original: Spanish

SUBSIDIES

Requests Pursuant to Article 27.4 of the Agreement on Subsidies and Countervailing Measures

Reply to the Follow-Up Question Posed by the UNITED STATES¹ Regarding the Notification of HONDURAS²

The following communication, dated 18 June 2002, has been received from the Permanent Mission of Honduras.

The following question is submitted with respect to the request by Honduras to reserve its right to use the procedures established in G/SCM/39 to request an extension of the transition period for export subsidies under Article 27.4 of the Agreement on Subsidies and Countervailing Measures (ASCM). This question is submitted without prejudice to our final position. We reserve the right to ask further questions.

Exemptions Granted Under the Free-Trade Zone of Puerto Cortés (ZOLI)
Exemptions Granted Under Export Processing Zones (ZIP)
Exemptions Granted Under the Temporary Import Regime (RIT)

Could Honduras please provide the implementing legislation for each of these programmes?

Reply

I have the honour to transmit the national legislation on the Temporary Import Regime (RIT), Export Processing Zones (ZIP) and Free Zones of Honduras.

¹ G/SCM/Q3/HND/7.

² G/SCM/N/74/HND.

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LAW ESTABLISHING THE FREE ZONE OF PUERTO CORTÉS

By virtue of the powers conferred upon it by Decree Law No. 1 of 6 December 1972, the Government of the Armed Forces, presided over by General Juan Alberto Melgar Castro, on 19 July 1976 enacted the Law establishing the Free Zone of Puerto Cortés, set to enter into force 20 days after its publication in the Official Journal "*La Gaceta*", in accordance with the laws of the country. The enacting Decree represents a step towards facilitating the work of the National Port Authority (ENP), the members of which have persistently struggled at all levels to attract Government interest and push through the decisions which would make the establishment of the free zone possible. The Decree reads as follows:

OFFICE OF THE HEAD OF STATE

DECREE No. 356

THE HEAD OF STATE IN COUNCIL OF MINISTERS

- WHEREAS:** It is in the national interest for Honduras to take advantage of its geographical position in the Central American and Caribbean region to facilitate domestic and international trade and industry by establishing commercial and industrial free zones.
- WHEREAS:** The establishment of free zones will benefit the country, in particular with regard to increased employment opportunities, and stimulate the development of commercial and industrial activities.
- WHEREAS:** Technical studies have confirmed the economic feasibility and favourable prospects offered by the organization of free zones and the fact that the Honduran State should take advantage of its privileged geographical situation and establish the Free Zone of Puerto Cortés, which will afford the opportunity to promote domestic and international trade with the rest of the world, in particular the neighbouring Central American republics.
- WHEREAS:** State involvement in the economy is based on reasons of public order and social interest, so that it can promulgate laws and economic measures to guide and stimulate the national economy with a view to ensuring economic benefits for the greatest number of citizens.
- THEREFORE:** By virtue of the powers conferred on him by Decree Law No. 1 of 6 December 1972,

DECREES AS FOLLOWS:

LAW ESTABLISHING THE FREE ZONE OF PUERTO CORTES

**CHAPTER I
CREATION, DEFINITION, OBJECTIVES AND APPLICABLE REGIME**

Article 1. The Free Zone of Puerto Cortés is hereby established with the aim of facilitating domestic and international trade and industry; its organization, operation and control shall conform to the provisions of this Law, the Regulation thereto and other applicable Laws.

Article 2. The Puerto Cortés free zone is an area of national territory under fiscal supervision and without a resident population. Its administration shall be the responsibility of the institution established or appointed by the Executive. Commercial and industrial enterprises, both domestic and foreign, engaged primarily in export and related or complementary activities, may set up and operate in this free zone under the regime established in this Law.

Article 3. The area and boundaries of the territory of the Puerto Cortés free zone shall be determined and approved by the Executive on the basis of the opinion of the Technical Secretariat of the Senior Economic Planning Council.

Article 4. Goods admitted into the Puerto Cortés free zone shall be exempt from payment of customs duties, charges, surcharges, consular fees, domestic consumption and other taxes and levies directly or indirectly related to customs import and export operations.

Similarly, sales and production which take place within the free zone and the commercial and industrial property and establishments therein shall be exempt from payment of municipal taxes and charges.

Profits earned from the free zone operations of enterprises established therein shall be exempt from payment of income tax, provided that these enterprises are not subject, in other countries, to taxes which render this exemption inoperative.

Staff working in the Puerto Cortés free zone shall pay income tax on their salaries and other similar personal income, in accordance with the pertinent law.

Article 5. The administrative institution of the Puerto Cortés free zone shall be exempt from payment of fiscal and municipal taxes, levies or charges.

Funds from the Puerto Cortés free zone shall be deposited in a State bank on a regular basis. The annual net profits of the free zone shall accrue to the Treasury, with the exception of those which the Executive, on the proposal of the board of directors of the administrative institution, allocates to the free zone investment and operation programmes.

**CHAPTER II
ADMINISTRATION AND CONTROL**

Article 6. The direction, administration, management and control of the Puerto Cortés free zone shall be the responsibility of the institution established or appointed by the Executive, which shall enjoy the following powers:

- (a) To permit natural and legal persons, whether domestic or foreign, to conduct the operations, activities, negotiations and transactions specified in Article 10 of this Law;
- (b) to construct office buildings, factories, warehouses, storage facilities, depots, workshops, yards and other installations for the purpose of conducting the activities and operations specified in the preceding subparagraph;
- (c) to lease immovable property and land parcels to enable other persons to construct the structures described in the preceding subparagraph;
- (d) to organize, set up, contract and manage the public services required for the free zone.

These services shall be established in coordination with the projects and plans of the municipality of Puerto Cortés and State public service institutions.

The administrative institution may allow natural or legal persons to carry out some of the activities described in the preceding subparagraphs.

Article 7. The administrative institution shall receive the necessary support for organizing and administering the Puerto Cortés free zone from the civil and military authorities as and when required in matters related to their functions.

Article 8. The Ministry of Finance and Public Credit (now the Ministry of Finance), in conjunction with the administrative institution, shall take the necessary steps to establish and implement the measures designed to protect the State's fiscal interests. To that end, the Ministry of Finance and Public Credit shall enact the provisions required to monitor the movement of goods into and out of the Puerto Cortés free zone in order to prevent smuggling and tax evasion.

Article 9. The territory of the Puerto Cortés free zone shall be enclosed by security fences so that the movement of persons, vehicles and cargo is restricted to designated entry and exit points.

CHAPTER III OPERATIONS

Article 10. Domestic or foreign natural and legal persons, may conduct the following operations and activities in the territory of the Puerto Cortés free zone:

- (a) Introduce, withdraw, store, handle, crate, display, pack, unpack, buy, sell, exchange, manufacture, mix, transform, refine, distil, assemble, cut, process and, in general, manage any type of goods, products and raw materials, containers and other commercial items and any other similar activity, the only exception being articles the importation, trade and manufacture of which are prohibited under the laws currently in force;
- (b) as a general rule, permanent or incidental operations, transactions, negotiations and activities of any kind related to the establishment and operation of free zones.

Article 11. Natural and legal persons which wish to set up in the Puerto Cortés free zone must obtain prior authorization from the administrative institution to conduct all or some of the operations referred to in the preceding Article, subject to monitoring and supervision by the customs authority in accordance with this Decree and the respective Regulation.

Article 12. Goods introduced into the Puerto Cortés free zone which have not undergone any form of industrial processing or manufacture therein may be re-exported free of duty.

Article 13. Foreign goods introduced into the Puerto Cortés free zone, which meet the criteria set out in the preceding Article, may be imported into the country for end use or final consumption, provided that they satisfy all the requirements and formalities laid down in the customs laws and regulations, the Law on the control of customs exemptions and other applicable laws and regulations. If a consular invoice is required for importation, the administrative institution shall issue an equivalent additional document.

Article 14. Domestic goods introduced into the Puerto Cortés free zone which have not undergone any form of industrial processing or manufacture therein may be exported provided that they satisfy all the requirements and formalities laid down in customs legislation and other applicable laws and regulations.

Article 15. Goods which have undergone any form of processing or manufacture in the Puerto Cortés free zone may be imported into the country for end use or final consumption upon payment of the corresponding duties and other charges.

Article 16. Goods which have undergone any form of processing or manufacture in the Puerto Cortés free zone may be exported upon payment of the corresponding tariffs.

Article 17. All goods which arrive in the Puerto Cortés free zone must be entered in a manifest and be consigned to a natural or legal person established within the zone or to persons who have obtained special and temporary prior authorization from the administrative institution to receive and dispatch goods in the cases provided for in the Regulations. Goods may also be consigned to the administrative institution, which shall act as the shipper's agent for the purposes of receipt and dispatch of such goods. In such cases, the goods shall be stored and handled by order of the respective owner, unless the latter appoints another person as his/her representative, with the agreement of the administrative institution. For applicable legal purposes, the owner and his or her representative shall be jointly and severally liable as consignees of the goods *vis-à-vis* the above-mentioned institution.

Article 18. Goods in transit through the Puerto Cortés free zone shall be exempt from payment of taxes upon their re-exportation, subject to the applicable international regulations and pursuant to the principle of reciprocity.

CHAPTER IV GENERAL AND TRANSITIONAL PROVISIONS

Article 19. Natural and legal persons who operate in the Puerto Cortés free zone and the operations which they conduct therein shall not be subject to the provisions of the Law on commercial agents and distributors; nor shall they require an import or export licence for operations conducted in the zone.

Article 20. The land or areas indispensable to the establishment or expansion of the Puerto Cortés free zone, within the boundaries established pursuant to Article 3 of this Law, are hereby classified as being of public interest. Accordingly, the State shall transfer to the administrative institution the necessary publicly owned immovable assets. If the assets are privately owned, they shall, if necessary, be expropriated in accordance with the applicable Law.

Article 21. Until such time as the State establishes or appoints the institution referred to in Article 2 of this Decree, the National Port Authority shall be responsible for managing the Puerto

Cortés free zone, subject to the application, on a supplementary basis, of the Basic Law governing the Authority.

Article 22. All provisions conflicting with this Law are hereby repealed.

Article 23. This Law shall enter into force 20 days after its publication in the Official Journal "*La Gaceta*".

Done in the city of Tegucigalpa, Central District, on the nineteenth day of July nineteen hundred and seventy-six.

JUAN ALBERTO MELGAR CASTRO
HEAD OF STATE

AMENDMENT

DECREE No. 131-98
TEGUCIGALPA, CENTRAL DISTRICT MUNICIPALITY 20 MAY 1998
SECTION IV
OF THE LAW TO PROMOTE PRODUCTION, COMPETITIVENESS
AND SUPPORT FOR HUMAN DEVELOPMENT

Article 17. The title of the Law establishing the Free Zone of Puerto Cortés, promulgated by Decree No. 356 of 19 July 1976, is hereby changed to "Law on Free Zones" and its benefits and provisions are extended to the entire national territory.

Article 18. Pursuant to Article 2 of the Law on Free Zones, the Executive, through the Ministries of Trade and Industry and of Finance, shall establish or appoint the institution to be responsible for administering free zones and devising customs control and inspection mechanisms, and the requirements to be met by free zone operations.

Article 19. All domestic and foreign enterprises which operate in a free zone, an export processing zone (ZIP) or a free tourist zone (ZOLT) must satisfy the Ministry of Trade and Industry that they have at least one permanent representative with broad powers to perform all legal acts and transactions of a civil, commercial and labour-related nature which are to take effect in the national territory.

Enterprises which are already established users and which conduct operations in such zones must certify that fact within ninety (90) days of the entry into force of this Decree.

Failure to appoint a permanent representative shall constitute sufficient grounds for terminating the lease on the industrial premises or plant or the authorization to operate in a free zone, with no liability on the part of the zone's administrative institution.

In the event of the termination of operations for any reason, the permanent representatives of such enterprises shall be publicly liable on their behalf, *vis-à-vis* third parties, for all outstanding debts and obligations.

DECISION No. 81-99

TEGUCIGALPA, CENTRAL DISTRICT MUNICIPALITY, 16 JUNE 1999

THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

WHEREAS: By Decree No. 131-98 of 30 April 1998, the Sovereign National Congress enacted the **LAW TO PROMOTE PRODUCTION, COMPETITIVENESS AND SUPPORT FOR HUMAN DEVELOPMENT**.

WHEREAS: Chapter II, Section IV, of the aforesaid Decree provides for amendments to the Law establishing the Free Zone of Puerto Cortés (Decree No. 356 of 19 July 1976 and amendments thereto).

WHEREAS: The above-mentioned provisions require that a Regulation governing the corresponding legal aspects be enacted.

THEREFORE:

Pursuant to Article 245, paragraph 1.11, of the Constitution of the Republic; Articles 116, 118.2, 119.2 and 122 of the General Law on Public Administration; Sole Section, Chapter VIII; Article 110 of the Customs Law; and Section IV, Articles 17, 18 and 19 of Decree No. 131-98 on the Law to promote production, competitiveness and support for human development,

DECIDES AS FOLLOWS:

REGULATION TO THE LAW ON FREE ZONES

CHAPTER I

OBJECTIVE

Article 1. The purpose of this Regulation is to establish the rules and procedures for implementing the Law on Free Zones pursuant to Decree No. 356 of 19 July 1976 and the amendments thereto.

CHAPTER II

DEFINITIONS

Article 2. For the purposes of the Decree referred to in the preceding Article and this Regulation, the following definitions shall apply:

- (a) **Restricted area:** The land area under fiscal supervision and control pursuant to Article 110 of the Customs Law, with no resident population, enclosed within the boundaries established by the Executive.
- (b) **Customs authority:** The customs service official or employee appointed by the Executive Revenue Directorate (DEI) who, by virtue of his or her position and remit, ensures that customs regulations are properly implemented and enforced.
- (c) **Beneficiary:** Any natural or legal person, whether domestic or foreign, which operates or uses the free zone and receives the benefits specified in the Law.

- (d) **Operating agreement:** A document signed by the beneficiaries of the Law and the Executive Revenue Directorate, setting out the obligations and rights of the parties as regards provision of customs fiscal supervision and control services.
- (e) **Single customs declaration for free zones and export processing zones (Directorate-General of Customs form DGA-01-90A):** An official document without tax value whereby all inward and outward movement of goods effected by beneficiaries of the Law in different zones is handled by the customs authority of the zone without the intervention of a customs broker.
- (f) **Commercial enterprise primarily engaged in export activities:** An enterprise operating in the restricted area, which allocates no less than 50 per cent of its annual sales to export or re-export, without prejudice to the provisions of Article 24 of this Regulation.
- (g) **Industrial enterprise primarily engaged in export activities:** An enterprise operating in the restricted area and engaged in the mechanical, physical or chemical processing of raw materials, semi-manufactures or finished goods, which allocates no less than 95 per cent of its annual production to overseas marketing, without prejudice to the provisions of Article 24 of this Regulation.
- (h) **Enterprise engaged in related or complementary activities:** An enterprise operating in the restricted area, whose output is geared to supplying the production processes of other enterprises established in the area or providing services to those enterprises or to the employees who render services in free zones and export processing zones (ZIP).
- (i) **Service enterprise:** An enterprise set up in the free zone which engages in economic activities providing direct and indirect support to zone users. This definition encompasses commercial enterprises established in the zone with the same function.
- (j) **Export:** The outward movement of goods from the restricted area to a foreign destination, after undergoing processing.
- (k) **Import:** The admission into the national territory of goods from the restricted area for end use or final consumption in Honduras.
- (l) **Administrative institution:** The Ministry of Trade and Industry, through the Directorate-General of Productive Sectors.
- (m) **Law:** The Law on Free Zones, under Decree No. 356 of 19 July 1976 and the amendments thereto.
- (n) **Goods:** All products, articles, raw materials, containers, packaging, manufactured goods and, in general, all assets with commercial value, with no exceptions whatsoever.
- (o) **Foreign goods:** Goods which enter the restricted area from overseas.
- (p) **Domestic goods:** Goods which enter the restricted area from the national territory.
- (q) **Operator:** A natural or legal person which has met the requirements laid down in the Law, is authorized to operate and manage a free zone and is established therein.

- (r) **User operator:** A natural or legal person, whether domestic or foreign, which is legally constituted, authorized to operate, manage and conduct the operations permitted under this Law and the Regulation thereto, and located in the restricted area.
- (s) **Re-export:** The outward movement from the restricted area of any goods which have not undergone processing and which are in the same condition as at the time of entry.
- (t) **User:** Any natural or legal person, whether domestic or foreign, which is legally constituted, established in a free zone and engaged in the operations permitted under the Law and this Regulation.
- (u) **Free zone or Zone:** A restricted area.

CHAPTER III REQUIREMENTS AND AUTHORIZATION

Article 3. Natural and legal persons seeking to benefit from this Law must submit, through a legal representative, an application to the Ministry of Trade and Industry specifying:

- (a) The main activity in which the enterprise will be engaged;
- (b) its location, including the exact address and telephone number;
- (c) its intended manufacturing output and export markets, or the activities or services that it will provide.

The following documents must be submitted with the application:

- (i) An authenticated photocopy of the public deed of incorporation of the company or an Individual Trader Declaration or, in the case of foreign companies, a Honduran trading authorization issued by the Ministry of Finance;
- (ii) an authenticated photocopy of the legal authority vested in the person in charge of the enterprise.

If, however, the applicant's only activities are those of a free zone operator, it shall not be subject to compliance with subparagraph (c).

Once compliance with the requirements set forth in this Article has been verified, the Ministry of Trade and Industry shall, without any further formalities, issue a resolution within a non-renewable maximum period of ten (10) days following submission of the application.

Users may also submit applications to the established operator for processing by the Ministry of Trade and Industry. The operator shall, in such cases, be authorized to submit to the Ministry in question, without the need for any form of representation, the applications it receives which meet all the established requirements.

Article 4. If the application is for a licence to operate a free zone, in addition to the documents specified in the preceding Article, the following must also be submitted:

- (a) A descriptive plan of the site, plant and fixtures for the planned project;

- (b) the title deed or, failing that, a lease contract for a term of not less than five (5) years for the immovable property where the operator will engage in free zone activities. This term may be altered in special cases, subject to the opinion of the Ad Hoc Commission, by a resolution of the Executive Revenue Directorate. With regard to lease contracts, operators are required to submit evidence of the renewal of the said contract to the Ministry of Trade and Industry one year in advance of its expiry date. The Ad Hoc Commission may specify cases where unforeseen circumstances or *force majeure* preclude compliance with this requirement; the period of advance notice may not, however, be less than three months under any circumstances.

Article 5. Once the application has been accepted, the Ministry of Trade and Industry shall immediately forward the file to the Directorate-General of Productive Sectors for opinion.

Notification of the resolution shall be made within a maximum of 60 days from the day following submission of the application and shall state the benefits granted to the applicant under the Law.

Once the authorizing resolution has become final, operators and user operators shall sign an operating agreement with the Executive Revenue Directorate, setting forth their obligations as regards services, control mechanisms and official inspections of the restricted area.

Article 6. The rights conferred upon the operator may only be transferred with the authorization of the Ministry of Trade and Industry, in which case the purchaser must satisfy the same requirements as the original owner, as laid down in Article 4 of this Regulation.

Article 7. Where a free zone operator applies for authorization to exploit new free zones, it must satisfy the requirements laid down in Articles 3 and 4 of this Regulation, with the exception of Article 3, second paragraph, subparagraph (i).

Article 8. Extension of the restricted area shall require only the submission of documentation attesting to ownership of the land or, where applicable, the lease contract. Expiry of the contract must at least coincide with the date of expiry of the original contract.

Article 9. The operator shall be exempt from any liability for damage, wastage, breakdown or loss caused by theft, robbery, fire or any other risks, including unforeseen circumstances or *force majeure*, to goods stored in the restricted area, except for those under its responsibility.

Buildings in the free zone shall be constructed according to the plans approved pursuant to Article 4 of this Regulation. Those plans may, however, be altered provided that structural and materials resistance standards are respected.

Non-compliance with these provisions shall give rise to the corresponding legal liability for damage.

Article 10. Operating agreements signed by the Executive Revenue Directorate with beneficiaries under this Law must be concluded in writing, in accordance with the terms and conditions laid down in the Law, this Regulation, customs legislation and the Tax Code.

Lease contracts between operators and users are subject to the Law, this Regulation and the agreement between the parties.

Article 11. The operator shall commence construction of the core elements of the zone within three (3) months of the date of signature of the contract with the Executive Revenue Directorate. In the event of the termination of operations for reasons other than unforeseen circumstances or *force majeure*, the operator shall give the administrative institution and the Executive Revenue Directorate (DEI) 60 days' notice for applicable legal purposes.

Article 12. Users may expand their operations in other restricted areas under customs and fiscal control. They must notify such operations to the Executive Revenue Directorate.

Article 13. Users which conduct handling, mixing and packaging operations or any of the operations referred to in Article 10 of the Law within the restricted area must comply with health and environmental regulations; otherwise, the operator may order work to be suspended until the shortcomings are rectified.

The operator shall report non-compliance with this provision to the respective Ministries so that the problems can be remedied and the corresponding penalties applied.

CHAPTER IV CUSTOMS CONTROL MECHANISM

Article 14. The boundaries of the restricted area shall be delimited by walls, fences or any other infrastructure so that the movement of persons, vehicles and goods is restricted to entry and exit points controlled by the customs authority.

Article 15. Monitoring of the restricted area shall be the responsibility of the customs authority, and shall be carried out in the manner deemed most appropriate to safeguard national fiscal interests. Special monitoring and supervision shall also be maintained at the area's entry and exit points to ensure that goods, vehicles and persons crossing those points satisfy all the requirements and formalities laid down in the Law and this Regulation without obstructing or hindering the import, production or export processes, taking into account the nature of the zones and the aims pursued by this Law. The free zone operator shall provide the Executive Revenue Directorate (DEI) with material facilities, such as physical space, computers, desks, files, fax and telephone service (excluding cellular phones) restricted to domestic use and similar facilities, as well as any assistance required by the Directorate to fulfil its responsibilities with regard to the control and inspection of materials and goods which enter and leave the free zone.

Article 16. Goods shipped from abroad to the zone must be documented separately from goods bound for another regime, with an equivalent entry in the cargo manifest.

Article 17. Shipments to the zone must, in addition to marks and countermarks, bear a label indicating the free zone to which they are being sent, in order to avoid customs clearance delays.

Article 18. The entry or exit of goods purchased pursuant to the tax benefits granted by this Law requires authorization from the customs authority, failing which offenders shall be penalized under the tax laws currently in force.

Notwithstanding the foregoing, vehicles used by the operator or users and implements which, by their nature, have to enter and leave the zone frequently shall be accorded the corresponding facilities.

Article 19. All goods consigned to natural or legal persons authorized to operate in a free zone shall be sent directly to the zone upon presentation of the single customs declaration for free

zones and export processing zones (form DGA-01-90A), the original commercial invoice and the bill of lading.

Article 20. The customs authority may authorize the transfer of goods within the restricted area provided that this is effected between users authorized to operate in the area and on the basis of the control document specified by that authority.

Article 21. For the purposes of the Law and this Regulation, when neither the customs authority nor the operator have been notified of the transfer or assignment of ownership of goods stored in the restricted area, the user named as the owner on the respective single customs declaration for free zones and export processing zones (form DGA-01-90A) shall be considered the consignee.

Article 22. The customs authority, *ex officio* or at the request of the competent authority, shall open packages at random to inspect their contents within the restricted area and before the consignees of the goods when they are present.

Article 23. The customs authority of a free zone may authorize the departure of goods from the zone to the customs office of export by means of the single customs declaration for free zones and export processing zones (form DGA-01-90A), ensuring that appropriate control mechanisms are established to avoid any risks in the transit of the goods.

The customs office of export shall confine itself to ensuring compliance with the control mechanisms referred to in the preceding paragraph.

Article 24. The importation of goods from the restricted area for end use or final consumption in Honduras shall be effected at the customs post located in the area, subject to compliance with all the requirements and formalities laid down in the customs legislation.

Article 25. Customs clearance procedures for the admission into the restricted area of domestic or foreign goods intended for export or re-export shall be effected at the customs post located in the area, subject to compliance with the requirements and formalities laid down in this Law and the Regulation thereto.

Article 26. Goods may be unloaded directly in the zone, with the customs post acting as the entry point for customs purposes. If the waybill indicates a specific customs house, the transfer of the goods from the customs entry point to the zone must be effected on the basis of a certified copy of the waybill and in compliance with customs transit requirements and formalities.

Article 27. Where, for any reason, the user has not received the original bill of lading, air waybill or consignment note, where appropriate, and this has been sent “to the order of the shipper” or “to the order of a banking institution” with a notification to the user, the goods may be admitted into the restricted area by the user subject to a guarantee for the value of the goods in the form of a bank guarantee or a surety bond issued by an insurance company.

Enterprises previously designated by the Executive Revenue Directorate may issue a promissory note as a guarantee. To that end, the Ad Hoc Commission shall draw up the relevant regulation which shall be adopted by means of an executive decision.

The guarantee shall be returned upon presentation of the original documents, duly endorsed.

Article 28. Users shall place unloaded waste material and damaged goods at the disposal of the Executive Revenue Directorate which shall order and supervise their destruction or donation to legally recognized public or private charitable or educational institutions. The Executive Revenue

Directorate may authorize the definitive importation of damaged goods or waste material with some commercial value, which shall be subject to the tax laws currently in force.

Article 29. As and when necessary on non-working days or outside office hours, the customs authority may authorize the entry of containers into the restricted area, and the outward movement of goods for shipment overseas. Both cases require presentation of the single customs declaration for free zones and export processing zones (form DGA-01-90A) and commercial invoices.

Users are required to submit the bill of lading and other mandatory documents within two working days.

Article 30. The operator and the customs authority are empowered to inspect inventories of goods stored in the restricted area.

If the inspection reveals inventory shortages which cannot be justified by comparing the records of the user with those of the customs authority, the user must submit a single customs import declaration (DUA) and pay the corresponding taxes and charges, without prejudice to any legal action which may be taken.

Article 31. Users shall keep general and special accounting records related to their activities and tax obligations.

Users shall provide the customs authorities with their production coefficients so that the use of raw materials and inputs in terms of resulting production can be established. The customs authority shall check those coefficients if it sees fit to do so.

Article 32. Users may grant manufacturing contracts to other natural and legal persons, whether domestic or foreign, located in the national territory. In such cases, the persons concerned may temporarily introduce goods from the restricted zones into the national territory for use in the manufacturing processes covered by those contracts, subject to the rules of the customs authority.

CHAPTER V PENALTIES

Article 33. The Directorate-General of Productive Sectors and the Executive Revenue Directorate, through their specialized offices, shall take action jointly or separately to supervise and control compliance by the operator or user operator with their obligations under the Law, this Regulation and the authorization decision.

Article 34. If the operator or user commits an offence resulting in criminal liability under the Law, the Ministry of Trade and Industry or the Executive Revenue Directorate shall send the file with a report to the office of the Attorney-General of the Republic for the requisite legal action to be taken.

Article 35. Non-compliance with material obligations or failure on the part of users and operators to pay their fees shall be punishable under Article 185 of the Tax Code. Arrears of over three (3) months in payments under the operating agreement shall be punishable by the suspension or outright cancellation of the authorization decision.

Article 36. Non-compliance with formal obligations shall be penalized pursuant to Article 180 of the Tax Code.

CHAPTER VI GENERAL PROVISIONS

Article 37. Operators are required to submit to the Ministries of Trade and Industry and of Finance all information which is strictly necessary to determine whether they are complying with the registration and other requirements set forth in the Law, its Regulation and the authorization decision.

All free zone user enterprises are required to submit on an annual basis to the Directorate-General of Productive Sectors, either directly or through the operator, information on goods entered and re-exported, as well as on job numbers, wages and salaries, the value of their exports and the activity in which they are engaged.

Article 38. Free zone users and operators shall grant their employees all the benefits established under current labour legislation and must also comply with industrial health and safety regulations. Any labour dispute shall be settled in accordance with the procedures laid down in the Labour Code, to which end activities taking place within the restricted area shall be considered as a public service in order to prevent any production stoppage interfering with the product export commitments of enterprises.

Article 39. The Ministry of Trade and Industry shall request the Ministry of the Interior and Justice to issue special permits authorizing the technical staff and management of enterprises licensed under the Law on Free Zones to enter and stay in the country.

Article 40. The customs authority in the zone shall have decision-making authority as regards matters coming within its sphere of competence and shall resolve them promptly in accordance with the Law, this Regulation and other applicable legal provisions.

Article 41. The contract signed by the operator with the Executive Revenue Directorate, as referred to in Article 5 of this Regulation, shall state the amount of the wages, salaries and social benefits to which the officials and employees required to provide the corresponding services are entitled.

Contracts shall be of indefinite duration and annual reviews shall only be conducted for budget items subject to cost variation.

Article 42. The operating fee payable on operator-DEI agreements shall be paid into a special account opened for that purpose in the Central Bank of Honduras at the request of the National Treasury.

Article 43. Pursuant to Article 19 of Decree No. 131-98, the permanent representatives of the enterprises shall be accredited to the Ministry of Trade and Industry, by means of credentials duly recorded in the corresponding Public Trade Register, and shall be notified of any relevant legal measures.

The Ministry of Trade and Industry shall make the information referred to in the preceding paragraph available to the Executive Revenue Directorate.

Failure to appoint a permanent representative shall constitute sufficient grounds for terminating without legal liability the lease contract on the industrial premises or plant or the authorization to operate in the free zone.

Article 44. With a view to achieving efficient and strict implementation of the Law and the Regulation thereto, an Ad Hoc Commission is hereby created as an advisory body to the Ministry of Trade and Industry, to act in special and extraordinary cases.

The Ad Hoc Commission shall act in coordination with the Directorate-General of Productive Sectors of the Ministry of Trade and Industry, which shall furnish it with all the information it requires to expedite the various administrative formalities within that Ministry's remit.

The Commission shall comprise two representatives of the Ministry of Trade and Industry, holding the offices of Chairman and Secretary respectively, one representative of the Executive Revenue Directorate and two private sector representatives accredited by the Honduran Private Enterprise Council (COHEP), the Honduran Free-Zone Association and the Honduran In-Bond Processors Association.

CHAPTER VII TRANSITIONAL PROVISIONS

Article 45. Enterprises covered by another special regime which wish to enjoy the benefits of the free zone regime must renounce the benefits of the former, which shall remain in force until a deed of release has been obtained, together with authorization from the Executive Revenue Directorate to operate under the new regime.

Article 46. Beneficiaries of this Law which, prior to publication of this Decision, have obtained authorization to operate under the free zone regime, shall sign the operating agreement referred to in Article 5 of this Regulation.

Article 47. The National Port Authority shall submit to the Executive Revenue Directorate a list of all the enterprises under the free zone regime, together with particulars of the respective current operating fees and their due date for each enterprise. This information shall be furnished within two months of the publication of this Decision.

The National Port Authority shall deposit an amount equivalent to the outstanding proportion of the annual fee payable for the unfinished period of liability in the account referred to in Article 42 of this Regulation.

The fees for subsequent periods shall be collected by the Executive Revenue Directorate and deposited in the above-mentioned account.

Article 48. The National Port Authority is established as an operator of the free zone of Puerto Cortés and La Ceiba as of the date on which this Decree comes into force, subject to all the obligations and benefits corresponding to its new status under the Law and this Regulation.

The National Port Authority is exempt from meeting the requirements laid down in Article 4 of this Regulation.

Article 49. All files relating to free zone operations which are currently being processed shall be dealt with in accordance with the provisions of this Decision.

Article 50. Decision No. 356-77 establishing the Regulation on the Free Zone of Puerto Cortés, dated 21 October 1977, is hereby repealed.

Article 51. This Decision shall enter into force as from the date of its publication in the Official Journal "*La Gaceta*".

FOR COMMUNICATION.

CARLOS R. FLORES F.

GABRIELA NUÑEZ DE REYES
MINISTRY OF FINANCE

REGINALDO PANTING P.
MINISTRY OF TRADE AND INDUSTRY

LAW ON EXPORT PROCESSING ZONES
DECREE No. 37-87

THE NATIONAL CONGRESS,

WHEREAS: It is the responsibility of the Government of the Republic to promote through appropriate legislation the creation of employment.

WHEREAS: Export processing zones (ZIP), under private management in countries having economic conditions similar to those existing in Honduras, have proved to be an effective means for creating large-scale employment, contributing to the diversification of the industrial base and generating rapid growth and greater indirect employment in the economy.

WHEREAS: Honduras must urgently join with this group of countries by developing export processing zones (ZIP) in order to create lasting large-scale employment, for which purpose it must compete efficiently with other countries, offering the services and incentives required by foreign manufacturers and investors and taking advantage of its geographical position in the area of Central America and the Caribbean and the experience of other States.

WHEREAS: There exists a consensus among the most representative organizations of the business sector organized under the Honduran Private Enterprise Council (COHEP) and of organized labour grouped under the General Workers Union (CGT) and the Confederation of Honduran Workers (CTH) as regards the benefits which would accrue in favour of national development as a result of the creation of export processing zones (ZIP).

THEREFORE

DECREES AS FOLLOWS:

LAW ESTABLISHING EXPORT PROCESSING ZONES (ZIP)

CHAPTER I

CREATION, DEFINITION AND APPLICABLE REGIME

Article 1. Export processing zones (ZIP) are hereby created under private ownership and management; their organization, operation and control shall be regulated by this Law, its implementing regulations and other applicable laws.

Article 2. Export processing zones (ZIP), under private ownership and management, are geographical areas within the national territory, approved and delimited by the Executive, through the Ministry of the Economy and Trade. They are subject to the fiscal supervision of the State, have no resident population, and are created for the purpose of using local labour to promote exclusively export-oriented manufacturing and service industries, by virtue of the establishment and operation within the zone of industrial enterprises which engage primarily in export activities and commercial firms which support industrial activity by supplying goods or services within the zone under the regime established by this Law.

Article 3. The goods and merchandise imported and/or exported under this Law shall enjoy total exemption from the payment of customs duties, consular fees, charges and surcharges, domestic consumption, production and sales taxes as well as other taxes, levies, fees and surcharges.

Likewise, the sales and production generated within the export processing zones and the industrial and commercial buildings and establishments located therein shall be exempt from the payment of State and municipal taxes.

The profits obtained from their operations by the user companies located within the export processing zones (ZIP) shall be exempt from the payment of income tax. Foreign natural or legal persons shall not be eligible for this benefit if the legislation of their respective countries allows the income tax paid in Honduras to be deducted from or credited to the taxes payable in their country of origin.

Income from salaries and other similar personal income of persons working in the export processing zones (ZIP) shall be subject to income tax and municipal taxes in conformity with the applicable Law.

CHAPTER II

THE OPERATING COMPANY, REQUIREMENTS, AUTHORIZATION AND POWERS

Article 4. The following is required in order to operate an export processing zone:

- (a) Establishment as a public limited company with fixed capital, underwritten and paid up in an amount not less than TWO MILLION LEMPIRAS (2,000,000);
- (b) the sole purpose of the company must be to exploit the export processing zone (ZIP);
- (c) proof that the property required for the purposes of the export processing zone is available; and
- (d) proof that the technical and financial resources for promotion, supply of services and development of the necessary infrastructure are available in order to create a minimum of 5,000 new jobs over a period of five years.

Article 5. Application for authorization to establish the operating company for the export processing zone and the approval and delimitation thereof must be made to the Executive, through the Ministry of the Economy and Trade, by its promoters or organizers.

Article 6. The application referred to in the previous Article, which must contain the name, nationality and domicile of each of the organizers or promoters, shall be accompanied by:

- (a) The draft public deed and the statutes;
- (b) the financial and administrative structure and estimates of the enterprise's performance over ten (10) years;
- (c) an economic study justifying the establishment of the proposed export processing zone; and
- (d) plans of the zone and proposed installations, showing the relevant capacity and specifications.

Article 7. The Executive, through the Ministry of the Economy and Trade and the Ministry of Finance and Public Credit, as appropriate, must ensure by means of any inquiries it deems necessary that:

- (a) The public interest and the general and local circumstances justify the authorization;
- (b) the basic financial, organizational, management and administrative conditions constitute a reasonable guarantee of the security of the State's fiscal interests;
- (c) the capacity is available to provide the users of the export processing zone with the services they require for the industrial processing of exports, including promotion and employment of labour; and
- (d) the proposed installations provide satisfactory guarantees of fiscal control.

If justified, the Executive, through the Ministry of the Economy and Trade, shall grant authorization for the issue and formalization of the public deed in accordance with the project submitted, and shall delimit the zone.

Article 8. The Executive, through the Ministry of the Economy and Trade, shall, upon presentation of the duly certified and registered public deed, authorize the export processing zone, granting the operating company so constituted the rights of exploitation, development and management within the area delimited.

Article 9. The rights granted to the company shall only be transferable with the authorization of the State, in which case the purchaser must satisfy the same requirements as the original owner, as specified in Article 4 et seq. of this Decree.

Article 10. The authorized operating company shall be directly responsible for the management, administration and operation of the export processing zone and may:

- (a) Construct any kind of industrial and service installations and the infrastructure required;
- (b) enter into any kind of contract for legal trade, including sale, leasing, barter or exchange, and deposit, as well as any undertaking with respect to the assets that it owns;
- (c) provide any services required in the export processing zone, install, control and administer such services and make them available to natural or legal persons operating in the area as users and workers, in accordance with the relevant laws; and
- (d) promote the export processing zone.

Article 11. The company authorized to operate the export processing zone shall enjoy the following tax benefits:

- (a) Importation free of levies, customs duties, charges, surcharges, consular fees, domestic consumption and sales taxes and other taxes, fees and levies that are directly or indirectly related to customs import operations, of all goods exclusively applied to or incorporated in the development and exploitation of the export processing zone, including building materials, equipment, spare parts, machinery and office equipment, provided that such goods are not produced in Honduras, and with the prior authorization of the Ministry of the Economy and Trade; and
- (b) exemption from income tax for 20 years and municipal taxes for ten years.

Article 12. A single company may be authorized to operate more than one export processing zone. Where a company authorized to operate an export processing zone applies for authorization to operate new zones, it will be exempt from compliance with the requirements relating to its incorporation as a company, but will still be required to comply with the remaining requirements laid down in this Law, including the investment of 2 million lempiras of own capital for each such zone.

CHAPTER III USERS AND OPERATIONS

Article 13. Any natural or legal person, whether Honduran or foreign, may, under a prior contract with the operating company and on any legal or contractual basis, acquire or lease the goods or services available in the export processing zone, for purposes of industrial processing for export or for the provision of complementary services in the zone.

Article 14. Natural or legal persons, whether domestic or foreign, which have contracted with the operating company of the export processing zone to establish themselves in the zone may conduct the following operations:

- (a) Introduce, withdraw, store, handle, crate, display, pack, unpack, buy, sell, exchange, manufacture, mix, transform, refine, distil, assemble, cut, process and, in general, manage any kind of merchandise, products or raw materials, containers and other commercial items and any other similar or identical activity, the only exception being articles the import, export, trade and manufacture of which are prohibited under the laws in force; and
- (b) permanent or incidental operations, transactions, negotiations and activities of any kind related to setting up and operating within the export processing zone, provided that they are not prohibited by law. The operations referred to in this article are subject to the supervision and control of the appropriate customs authority in accordance with the provisions of this Decree.

CHAPTER IV GOODS OR MERCHANDISE

Article 15. Merchandise which has been introduced into the export processing zone and has not, within the zone, undergone any form of industrial processing or manufacture, may be re-exported with the same certificate of origin with which it entered the export processing zone, free of all taxes, duties, levies and other fiscal charges, municipal or district taxes of any kind, provided that this is not done for purposes of unfair competition.

Article 16. Foreign merchandise which has been introduced into the export processing zone and has not, within the zone, undergone any form of industrial processing or manufacture, may not be imported for final use or consumption in Honduras.

Article 17. All merchandise of domestic origin must, in order to be introduced into the export processing zone, fulfil all the requirements and formalities laid down in the customs legislation and other laws and regulations of the country, including monetary and exchange regulations.

Article 18. Merchandise which has undergone any form of processing or manufacture within the export processing zone may be imported for final use or consumption in Honduras, provided that there is no domestic production of such goods, and with prior authorization from the Ministry of the

Economy and Trade, subject to payment of the appropriate customs duties and other levies required under the customs legislation and other applicable laws and regulations.

Article 19. Merchandise of Honduran origin introduced directly from Honduras into the export processing zone, which has undergone processing or manufacture within the zone, may be exported free of all taxes, duties, levies and other municipal or district taxes directly or indirectly related to customs export operations, subject to any limitations contained in agreements signed by Honduras that establish restrictions or export quotas.

Article 20. The users of an export processing zone may grant manufacturing contracts to other domestic or foreign natural or legal persons located in other parts of the national territory. In such cases, the persons concerned may temporarily introduce goods into the national territory from the zones for use in the manufacturing process under such contracts, subject to the provisions of the temporary import regime that is in force.

Article 21. Any user of an export processing zone may transfer under any title goods and services to another user located in a zone, subject to the approval of the appropriate customs authority.

Article 22. All merchandise that arrives in an export processing zone must be entered in a manifest and be consigned to a natural or legal person established within that export processing zone or to those persons who have obtained special and temporary prior authorization from the operating company to receive and dispatch goods. Merchandise may also be consigned to the operating company, which shall act as agent of the shipper for the purposes of receiving and dispatching such goods. In such cases, the merchandise shall be stored and handled by order of the respective owner, unless the latter appoints another person as his representative, with the agreement of the operating company. For applicable legal purposes, the owner and his representative shall be jointly and severally liable as consignees of the merchandise *vis-à-vis* the above-mentioned operating company. The storage operations to which this Article refers are not considered to involve private bonded warehouses as defined in the Customs Law.

CHAPTER V GENERAL PROVISIONS

Article 23. The activities carried out within an export processing zone shall be considered to be of public benefit and the natural or legal persons which operate in such zones shall not be subject to the Law on representatives, distributors and agents of domestic and foreign companies, nor shall they be subject to licences, permits, registers or prior import or export authorizations, or require an import-export permit for their operations.

The enterprises that operate within the zone shall grant their workers all the benefits laid down in the existing labour laws. Any labour dispute shall be settled in accordance with the procedures laid down in the Labour Code with regard to public services, so as to prevent any production stoppage interfering with the product export commitments of enterprises.

Article 24. The Executive, through the Ministry of the Economy and Trade and the Ministry of Finance and Public Credit, shall establish the necessary controls and mechanisms to protect fiscal interests without obstructing or hindering the import, production or export processes, taking into consideration the nature of the zones and the objectives pursued in this Law.

The State officials or employees assigned to the export processing zone shall have decision-making powers in dealing with matters falling within their competence and shall resolve such matters as expeditiously as possible in conformity with this Law and its regulations. Similarly, the Ministry

of the Interior and Justice shall authorize by means of special permits the entry and stay in the country of the technical and management staff of the user companies.

CHAPTER VI SANCTIONS

Article 25. Without prejudice to any criminal actions, the Ministry of the Economy and Trade shall impose administrative fines, in the amounts and in accordance with the procedure laid down in the Regulation to this Law, on those beneficiary persons who commit any of the following offences:

- (a) Failure to comply with any of the obligations laid down in this Law and the Regulation thereto;
- (b) failure to comply with the obligations and requirements set forth in the Decision on Authorization of the Export Processing Zones (ZIP); and
- (c) failure to carry out the directives and other provisions issued by the Ministry of the Economy and Trade.

Article 26. The Executive, through the Ministry of the Economy and Trade and the Ministry of Finance and Public Credit, shall issue the Regulation to this Law within sixty (60) days following its entry into force.

Article 27. This Law shall enter into force twenty (20) days after its publication in the Official Journal "La Gaceta".

Done in the city of Tegucigalpa, Central District Municipality, in the Assembly Hall of the National Congress, on the seventh day of the month of April nineteen hundred and eighty-seven.

**CARLOS ORBIN MONTOYA
PRESIDENT**

**ARMANDO ROSALES PERALTA
SECRETARY**

**TEOFILO NORBERTO MARTEL CRUZ
SECRETARY**

**To the Executive
To be implemented accordingly**

Tegucigalpa, 10 April 1987

REGULATION TO THE LAW ON EXPORT PROCESSING ZONES

Tegucigalpa, 31 July 1987

DECISION No. 684-87

THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

- WHEREAS:** By Decree No. 37-87 of the seventh of April nineteen hundred and eighty-seven the Sovereign National Congress enacted the Law establishing Export Processing Zones (ZIP).
- WHEREAS:** The application of that instrument requires regulations to be established for the provisions contained in the Law.
- THEREFORE:** THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC, in exercise of the powers conferred upon him by law,

DECIDES:

To enact the following

REGULATION TO THE LAW ESTABLISHING EXPORT PROCESSING ZONES (ZIP)

CHAPTER I SUBJECT

Article 1. This Regulation contains the rules and procedures for the application of the Law establishing Export Processing Zones (ZIP), as contained in Decree No. 37-87 enacted by the Sovereign National Congress on the seventh of April nineteen hundred and eighty-seven.

CHAPTER II DEFINITIONS

Article 2. For the purposes of the Decree mentioned in the preceding Article and this Regulation, the following definitions shall apply:

LAW: Law establishing Export Processing Zones (ZIP) (Decree No. 37-87 of the seventh of April of nineteen hundred and eighty seven)

MANUFACTURING INDUSTRY: Economic activity for the mechanical, physical or chemical processing of raw materials, semi-manufactured goods or finished articles.

SERVICE INDUSTRY: Economic activity whose output is intended for export.

SERVICE ENTERPRISE: An enterprise established in the ZIP whose economic activities provide direct or indirect support to the users of the zone. This definition includes the commercial enterprises established in the ZIP.

MERCHANDISE: Any product, article, raw material, container, packaging or manufactured item and, in general, any good without exception.

USER ENTERPRISE: Any domestic or foreign natural or legal person, legally constituted and established in the ZIP, which engages in the operations referred to in Articles 2 and 14 of the Law.

BENEFICIARY: Any domestic or foreign natural or legal person, operator or user of the ZIP, which enjoys the benefits established by the Law.

OPERATING COMPANY: The legal person which, complying with the requirements laid down in the Law, is authorized to operate and administer the ZIP.

CUSTOMS AUTHORITY: The customs administration established within a ZIP.

RESTRICTED AREA: The territorial area under fiscal supervision, with no resident population, contained within the limits defined by the Executive.

IMPORTATION: The entry into the national customs territory of merchandise from the restricted area, for final use or consumption in Honduras.

EXPORTATION: The outward movement of merchandise from the restricted area to a foreign destination. This does not apply to foreign merchandise which, within the restricted area, has not undergone any processing operations.

RE-EXPORTATION: The outward movement, from the restricted area to another country, of foreign merchandise which has not, in that area, undergone any of the above-mentioned processing operations.

CHAPTER III PROCEDURES

Article 3. In order to avail itself of the provisions of the Law, the party interested in operating and administering a ZIP must submit to the Ministry of the Economy and Trade an application on first-class stamped paper, together with two copies, containing the following:

- (a) The precise title of the authority to which it is addressed;
- (b) the name, business name, nationality, domicile, full address, telephone number and other general information on each of the promoters and organizers;
- (c) specific information on the nature of the application;
- (d) any other information that the Ministry of the Economy and Trade may consider necessary.

Article 4. The application referred to in the preceding article must be accompanied by:

- (a) Legally established authority, unless its legal status has already been recognized by the Ministry of the Economy and Trade;
- (b) the draft public deed of incorporation and the statutes;
- (c) the financial and administrative structure and estimates of the enterprise's performance over ten (10) years;

- (d) the original and a copy of an economic study justifying establishment of the export processing zone (ZIP), which shall contain as a minimum the information contained in the Single Annex to this Regulations;
- (e) the plans of the zone and proposed installations, showing the relevant capacity and specifications;
- (f) other documents that may be required in accordance with the laws in force in Honduras.

Article 5. Upon receipt of the application and the accompanying documentation, the Ministry of the Economy and Trade shall forward it to the Directorate-General of Industry and the Directorate-General of Customs respectively, which shall in their respective fields carry out individually appropriate analyses and evaluations, and issue opinions indicating the degree of compliance with the provisions contained in Article 7 of the Law.

Article 6. Once the application has been assessed and the deed of incorporation, duly validated and registered, has been presented, the Executive, through the Ministry of the Economy and Trade, shall issue the corresponding Decision on Authorization.

Article 7. The Decision on Authorization of the operating company referred to in the preceding Article shall include, in addition to the benefits and obligations mentioned in the Law, the following provisions: the operating company shall provide the Directorate-General of Customs with the facilities and assistance which it requires to carry out its responsibilities of supervising and inspecting materials and merchandise that enter and leave the export processing zone (ZIP). In any event, the operating company shall act in coordination with the Directorate General of Customs whenever appropriate.

Article 8. Where the operating company requests authorization to administer new zones, it must fulfil the requirements and obligations of the Law and this Regulation, except with regard to incorporation, as the existing deed of incorporation may be used to meet those requirements for the new zone. In any event, the company must keep separate accounts for the operations carried out in each of the industrial zones in which it is established.

CHAPTER IV CUSTOMS CONTROL MECHANISMS

Article 9. A customs administration, with responsibility for the formalities relating to incoming and outgoing merchandise traffic, shall be established in each ZIP, and shall adopt the necessary measures of control so as to prevent the commission of any offence or breach of customs regulations.

Article 10. The operating company shall propose to the customs authority the internal regulations required to regulate the entry of persons and goods into the ZIP.

Article 11. Goods shipped from abroad to a ZIP must be separated from goods destined for another regime, with an equivalent entry in the cargo manifest.

Article 12. Shipments to a ZIP must, in addition to marks and countermarks, bear a label that indicates the processing zone to which they are being sent, with a view to preventing delays in customs clearance.

Article 13. Goods may be unloaded directly in the ZIP, with the ZIP customs post acting as the entry point for customs purposes. If the manifest indicates a specific customs house, the transfer of such goods from the customs entry point to the ZIP must be effected on the basis of a certified copy of the cargo manifest and in compliance with the requirements and formalities of customs transit.

Article 14. Once the relevant formalities have been completed and the goods unloaded, they shall be made available to the consignee and the customs authority may carry out the physical inspection of the goods deposited.

Article 15. If there is evidence of goods having been switched or of any other dishonest act suggestive of fraud, the competent customs authority shall notify the Directorates-General of Customs and of Industry so that they may deal with the matter within their respective fields of competence.

Article 16. The transfer of the goods from the ZIP to the export customs house shall be authorized by the customs authority located in the zone, which shall ensure that there are proper methods of control for the avoidance of any risk in transit.

Article 17. The export customs house, upon receipt of the authorization issued by the customs authority of the ZIP, shall authorize the shipment in question. The goods listed on the manifest shall be inspected only if there is evidence of possible fraud.

Article 18. The customs formalities for the placement on the domestic market of goods that have been entered from the ZIP shall be carried out at the customs house located in the ZIP.

CHAPTER V SANCTIONS

Article 19. The Ministry of the Economy and Trade and the Ministry of Finance and Public Credit, through their specialized offices, shall take action jointly or separately to supervise and control the operating company's compliance with its obligations under the Law, this Regulation and the Authorization Decision.

Article 20. For the purposes of Article 25 of the Law, once an offence has been duly proved to have taken place and the relevant resolution has been confirmed, the Office of the Attorney-General of the Republic shall be notified by the Ministry of the Economy and Trade for the purpose of enforcing payment of the fine on the grounds and in the amounts listed below:

- (a) Failure to comply with any of the obligations laid down in the Law and in this Regulation: L 150,000;
- (b) failure to comply with the obligations and requirements contained in the Decision on Authorization of the ZIP: L 100,000;
- (c) failure to comply with the directives and other provisions issued by the Ministry of the Economy and Trade: L 50,000.

CHAPTER VI GENERAL PROVISIONS

Article 21. Enterprises located in the ZIP and the operating companies have an obligation to provide the authorities in the Ministry of the Economy and Commerce and the Ministry of Finance and Public Credit with all the accounting records, documents and books that are strictly necessary to

determine whether the enterprises and the operating company are in compliance with their maintenance and registration obligations and the other obligations set out in the Law, the Regulation thereto and the Authorization Decision.

Article 22. The Ministries of the Economy and Trade and of Finance and Public Credit and the operating company shall issue, on the basis of consultation and coordination, the directives and documents that they consider necessary for the application of the Law.

Article 23. These Regulations shall come into force from the date of their publication in the Official Journal "La Gaceta".

FOR COMMUNICATION

JOSE SIMON AZCONA HOYO
CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

EFRAIN BU GIRON
Secretary of State for Finance and Public Credit

ROBERTO ALVARADO DOWNING
Secretary of State for the Economy and Trade

SINGLE ANNEX

MINIMUM INFORMATION THAT MUST BE INCLUDED IN THE ECONOMIC STUDY JUSTIFYING THE ESTABLISHMENT OF THE EXPORT PROCESSING ZONE (ZIP)

- I. Summary of the Project
- II. Organization
 - (i) List of shareholders
 - (ii) Organizational structure and description of functions
- III. Project engineering
 - (i) Full list of the machinery, equipment and material to be imported
 - (ii) Area and construction programme (layout to be provided)
 - (iii) Basic infrastructure
 - (iv) Breakdown of infrastructure costs
 - (v) Waste treatment programme
- IV. Economic and financial aspects (over 10 years)
 - (i) Employment structure of the operating company and the users
 - (ii) Global investment plan and its financing
 - (iii) Annual payment capacity
 - (iv) Cash budget
 - (v) Pro forma financial statement
 - (vi) Pro forma profit and loss statement
 - (vii) Statement of origin and application of funds
 - (viii) Analysis of net present value (NPV) and the internal rate of return (IRR)
 - (ix) Estimated financial indices
 - (x) Programme of income by origin
 - (xi) Financial cost analysis

DECREE No. 37 OF 20 DECEMBER 1984

TEMPORARY IMPORT REGIME

**THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC, IN THE COUNCIL
OF MINISTERS,**

WHEREAS: The Government of the Republic is under an obligation to strengthen the national economy, being required for that purpose to introduce measures that stimulate production and increase national exports, as well as to promote employment by combining human with other national and foreign resources.

WHEREAS: It is the duty of the State to encourage investment and create mechanisms for the development of export industries.

WHEREAS: It is a matter of national urgency to create the conditions for immediate exploitation of benefits under the Caribbean Basin Economic Recovery Programme, extraordinary measures being required for that purpose, as dictated by circumstances.

THEREFORE:

Pursuant to Article 245, paragraphs 11, 20 and 23, of the Constitution of the Republic,

DECREES:

TEMPORARY IMPORT REGIME

Article 1: * Establishment of a temporary import mechanism to promote exports, consisting of the suspension of payment of customs duties, consular fees, the 5 per cent customs administrative service tax established by Decree No. 85-84 of 31 May 1984, and any other taxes and surcharges, including the general sales tax, on the import of:

- (a) Raw materials, semi-manufactures, packaging and other goods that are assembled, processed, modified or physically incorporated in products exported to non-Central American countries;
- (b) machinery, equipment, tools, spare parts and accessories used exclusively to assemble, process, modify or produce articles destined for export to non-Central American countries. The goods covered by this subparagraph may be freely disposed of after five years have elapsed from the date of their temporary import, subject to prior authorization by the Ministry of Finance and Public Credit (now the Ministry of Finance);
- (c) sample books, instructional material, patterns and models needed to adjust production to the standards and design requirements of the international market and for demonstration, research or educational purposes.

Article 2. * The beneficiary shall assume responsibility for the full amount made payable by the suspension granted under the preceding Article, together with a fine equivalent to 100 per cent of the tax liability, where the goods imported by virtue of this Decree are destined for the domestic or Central American market.

Article 3. The beneficiary undertakes to comply with the following obligations:

- (a) Provide to the Ministry of Finance and Public Credit (now the Ministry of Finance) and to the Ministry of the Economy and Trade (now the Ministry of Industry and Trade) a sworn statement certifying the use made of all imported goods during each half-year period, under the temporary import mechanism, together with information on the value, quantity, category or type and destination of the goods exported. The statement shall be submitted in the months of July and January of each year;
- (b) maintain a proper register to facilitate supervision of goods imported and exported under this Decree;
- (c) initiate exportable production within six months of the date of authorization of the commencement of operations under this mechanism or of the extension, where appropriate.

Article 4. * In order to ensure compliance with the procedures provided for in this Decree and the Regulation thereto, the beneficiary shall be required to provide a guarantee to the Ministry of Finance and Public Credit (now the Ministry of Finance), which may take the form of a customs bond (*prenda aduanera*), a fixed or floating insurance policy or any other acceptable instrument.

If the beneficiary violates any of the statutory provisions and regulations, the Ministry of Finance and Public Credit (now the Ministry of Finance) may require that the guarantee provided be replaced by a cash deposit, a certified cheque, a fidelity bond or an immediately convertible bank guarantee.

Article 5. * Profits from exports under this regime shall be totally exempt from income tax for a period of ten years as from the date of commencement of exportable production, where the enterprise meets the following requirements:

- (a) It is an industrial enterprise; and
- (b) its entire output is exported to non-Central American countries and creates direct employment.

This benefit shall not be granted to foreign natural or legal persons, where the legislation of their respective countries allows the taxes they pay in Honduras to be deducted from or credited to the taxes payable in their country of origin.

The above-mentioned benefit shall be revoked where the laws and regulations governing the temporary import mechanism are found to have been violated.

Article 6. * The beneficiaries of this Decree may not simultaneously avail themselves of benefits under other laws on the promotion of exports.

Article 7. * Any company interested in participating in this regime must submit a request to the Ministry of the Economy and Trade (now the Ministry of Industry and Trade), which shall issue a decision on authorization, setting forth the rights and obligations of the beneficiary.

Article 8. * The Directorate-General of Customs (now the Executive Revenue Directorate) is empowered to authorize deductions for losses, waste or damage to imported inputs, in accordance with the opinion issued by the Directorate-General of Industry (now the Directorate-General of Productive Sectors).

Article 9. * The provisions of the Law on representatives, distributors and agents of domestic and foreign companies shall not be applicable to the imports covered by this Decree.

Article 10. The Directorate-General of Customs (now the Executive Revenue Directorate) and the Directorate-General of Industry (now the Directorate-General of Productive Sectors) must co-ordinate their efforts in order to ensure effective monitoring of compliance with this Decree and the Regulation thereto.

Article 11. The Executive, through the Ministries of the Economy and Trade and of Finance and Public Credit (now the Ministries of Industry and Trade and of Finance, respectively), shall regulate the implementation of this Decree.

Article 12. This Decree shall enter into force from the date of its publication in the Official Journal "La Gaceta".

Done in the Assembly Hall of the Council of Ministers, on the twentieth day of December nineteen hundred and eighty four.

For publication.

DOCTOR ROBERTO SUAZO CORDOVA
CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

Arnulfo Pineda López
Secretary of State in the Offices of the Interior and Justice

Ubodoro Arriaga Iraheta
Secretary of State in the Offices of the Presidency

* This Decree was amended by Decree No. 190-86 of 31 October 1986.

ANNEX I

DECREE No. 190-86 OF 31 OCTOBER 1986

THE NATIONAL CONGRESS,

WHEREAS: The Government of the Republic has defined as one of its priority goals the expansion of foreign trade through the promotion and diversification of exports.

WHEREAS: In this context it is necessary to adopt new criteria, to streamline and simplify Government formalities applicable to the legal instruments concerned with exports.

WHEREAS: The temporary import regime (Régimen de Importación Temporal) established under Decree No. 37 of 20 December 1984 has been evaluated and found to require updating in order to make it a flexible and efficient legal instrument.

THEREFORE

DECREES:

Article 1. Article 6 of Decree No. 37 of 20 December 1984 (Temporary Import Regime) is hereby repealed, and Articles 1, 2, 4, 5, 7, 8 and 9 are amended to read as follows:

Article 1. Establishment of a temporary import mechanism to promote exports, consisting of the suspension of payment of customs duties, consular fees, the 5 per cent customs administrative service tax established by Decree No. 85-84 of 24 May 1984, the general sales tax and any other taxes and surcharges on the import of:

- (a) Raw materials, semi-manufactures, containers, packaging and other inputs required to produce goods or services for export to non-Central American countries, or assembled, processed, modified or physically incorporated in products or services that are exported to non-Central American countries;
- (b) machinery, equipment, moulds, tools, spare parts and accessories used exclusively to assemble, process, modify or produce goods or services destined for export to non-Central American countries. The goods referred to in this subparagraph may be freely disposed of after five years have elapsed from the date of their temporary import, subject to prior authorization by the Ministry of Finance and Public Credit (now the Ministry of Finance).

Sample books, instructional material, patterns and models needed to bring the production of goods and services into line with the standards and design requirements of the international market and for demonstration, research or educational purposes.

Article 2. Where the goods and services referred to in Article 1 of this Decree were sold or transferred in any way for consumption on the domestic market, or exported to Central American countries, the Directorate-General of Customs (now the Executive Revenue Directorate), or the appropriate customs administration, once the violation has been duly verified and the relevant resolution has become final, shall notify the Office of the Attorney-General of the Republic in order to secure payment of the guarantee, together with a fine equivalent to 100 per cent of the tax liability.

Article 4. In order to ensure compliance with the procedures provided for in this Decree and the Regulation thereto, the beneficiary shall be required to provide a guarantee to the Directorate-

General of Customs (now the Executive Revenue Directorate) or the competent customs authority. The guarantee shall be provided for each consignment and for half-yearly or yearly periods of import, and may take the form of a promissory note, a customs bond, a fixed or floating insurance policy, or any other instrument acceptable to the Directorate-General of Customs (now the Executive Revenue Directorate) or the competent customs administration.

Article 5. Profits from the export of goods to non-Central American countries shall be totally exempt from the payment of income tax for a period of ten years from the date of commencement of exportable production, where the enterprise meets the following requirements:

- (a) It is an industrial or agro-industrial enterprise;
- (b) it provides a minimum of 25 direct jobs;
- (c) the products concerned are non-traditional products within the meaning of the Export Promotion Law.

This benefit shall not be granted to foreign natural or legal persons where the legislation of their respective countries allows the income tax paid in Honduras to be deducted from or credited to the taxes payable in their country of origin.

The above-mentioned benefit shall be revoked where the laws and regulations governing the temporary import mechanism are found to have been violated.

Article 7. Any company interested in participating in this regime must submit an application to the Directorate-General of Industry of the Ministry of the Economy and Trade (now the Directorate-General of Productive Sectors and Ministry of Industry and Trade, respectively), which shall analyse and evaluate the application and issue the corresponding opinion.

On the basis of the opinion in question, the Ministry of the Economy and Trade (now the Ministry of Industry and Trade) shall issue the authorization to operate under this regime, in which the rights and obligations of the beneficiary shall be established, with the express stipulation that non-compliance will attract the sanctions laid down in this Decree.

The interested party's application to participate in this regime must include a special request for the granting of an importer's and/or exporter's licence.

Article 8. The Directorate-General of Customs (now the Executive Revenue Directorate) is empowered to authorize deductions for losses, waste or damage to goods that are the subject of the suspension of payment referred to in Article 1 of this Decree, in accordance with the opinion issued by the Directorate-General of Industry (now the Directorate-General of Productive Services).

Article 9. The provisions of the Law on representatives, distributors and agents of domestic and foreign enterprises shall not apply to the imports covered by this Decree; nor shall they be subject to licences, permits, registrations or import/export authorizations issued by the Central Bank of Honduras, the only requirement being to provide the relevant information to that institution.

Article 2. Add the following to the provisions of the instrument concerned:

- Exports made under this regime shall be exempt from payment of the export duty provided for in Article 10 of Decree No. 873 of 26 December 1979;

- the beneficiaries of this regime shall be entitled to subcontract manufacturing processes to other natural or legal persons in Honduras, using for that purpose the goods referred to in Article 1(a) of the Decree; they must compulsorily inform the Directorate-General of Industry and the Directorate-General of Customs (now the Directorate-General of Productive Sectors and the Executive Revenue Directorate, respectively), of all their operations;
- transfers under any title of goods imported under this regime to companies operating in free zones or export processing zones shall be considered as exports to non-Central American countries, and the companies in question may accord production, processing or service provision contracts to the beneficiaries of the regime.

The products and services that are the subject of transfer and of the above-mentioned contracts may not be sold on the domestic market.

The beneficiaries of this regime may sell or transfer their products or services to other companies within the national territory, whether or not they are beneficiaries of this regime, where the companies concerned physically incorporate such products or require them to supplement or modify other products that are exported to non-Central American countries.

Every importation of goods referred to in Article 1 of this Decree shall be authorized by means of a temporary import licence issued by the Directorate-General of Customs (now the Executive Revenue Directorate) or the respective customs administration, with no additional formalities apart from the posting of the guarantee, so that the corresponding temporary import and customs clearance procedures can be carried out immediately.

Article 3. This Decree shall enter into force as of its publication in the Official Journal "La Gaceta".

Done in the city of Tegucigalpa, Central District Municipality, in the Assembly Hall of the National Congress, on the thirty-first day of the month of October nineteen hundred and eighty-six.

CARLOS ORBIN MONTOYA
PRESIDENT

Oscar Armando Melara Murillo
SECRETARY

TEOFILO NORBERTO MARTEL CRUZ
SECRETARY

To the Executive.

To be implemented accordingly.

Tegucigalpa, 3 November 1986.

JOSE SIMON AZCONA HOYA
PRESIDENT

REGINALDO PANTING P.
Secretary of State in the Offices of the Economy and Trade

ANNEX II

DATE OF PUBLICATION OF THE VARIOUS LAWS AND REGULATIONS IN THE OFFICIAL JOURNAL "LA GACETA"

Name of Law	Number and date of Decree and Decision	Date of publication in the Official Journal "La Gaceta"
Temporary Import Regime	Decrees Nos. 8-85 and 190-86 of 7 February 1985 and 31 October 1986, respectively.	24 October 1985 and 27 November 1986, respectively (Nos. 24,731 and 25,087 respectively)
	Decision No. 545-87 of 16 May 1987.	16 May 1987 (No. 25,225)
Law on Export Processing Zones	Decree No. 37-87 of 7 April 1987.	27 April 1987 (No. 25,209)
Law establishing the Free Zone of Puerto Cortés	Decision No. 684-87 of 31 July 1987.	19 August 1987 (No. 25,306)
	Decree No. 356 of 19 July 1976.	21 July 1979 (No. 21,947)
	Decree No. 777 of 1979.	2 November 1977 (No. 22,336)
	Decision No. 356-77 of 2 November 1977.	

REGULATION ON THE TEMPORARY IMPORT REGIME

DECISION No. 545-87

THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC,

WHEREAS: On 7 February 1985, the National Congress, by Decree No. 8/85, approved the full text of Decree No. 37, "Temporary Import Regime", issued by the Constitutional President of the Republic in the Council of Ministers, making it a law of the Republic.

WHEREAS: On 20 February 1985, the Executive issued Decision No. 174/85, "Regulation on the Temporary Import Regime", which contains implementing regulations for Executive Decree No. 37, as contained in Legislative Decree No. 8/85.

WHEREAS: On 31 October 1986, the Sovereign National Congress, by Decree No. 190/86, modified the temporary import regime contained in the above-mentioned legal instruments, introducing amendments and additions.

WHEREAS: The above-mentioned provisions require that a Regulation governing the corresponding legal aspects be enacted.

THEREFORE: Pursuant to Article 245, paragraph 11, of the Constitution of the Republic, Article 116 and Article 118, paragraph 2, of the General Law on Public Administration, and Article 11 of Decree No. 8/85 of 7 February 1985,

DECIDES:

To issue the Regulation pertaining to Legislative Decrees Nos. 8/85 of 7 February 1985 and 190/86 of 31 October 1986, providing for the approval and amendment of Executive Decree No. 37 of 20 December 1984, as follows:

REGULATION ON THE TEMPORARY IMPORT REGIME

CHAPTER I

SUBJECT

Article 1. This Regulation contains rules and procedures for the application of Executive Decree No. 37 of 20 December 1984, establishing the temporary import regime, as approved by Decree No. 8/85 of the National Congress and amended by Legislative Decree No. 190/86 of 31 October 1986.

The temporary import regime hereby regulated has been instituted in order to promote and diversify Honduran exports.

CHAPTER II

DEFINITIONS

Article 2. For the purposes of the Decrees related to the preceding Article and this Regulation, the following definitions of terms and abbreviations shall apply:

TEMPORARY IMPORT REGIME OR "THE REGIME" FOR SHORT. The customs regime providing for suspension of the payment of customs duties, consular fees, the 5 per cent (5%) customs administrative service tax established by Decree No. 85/84 of 24 May 1984, including the general sales tax and any other taxes and surcharges on the importation into the customs territory of:

- (a) Raw materials, semi-manufactures, containers, packaging and other inputs required to produce goods or services for export to non-Central American countries, or assembled, processed, modified or physically incorporated in products or services that are exported to non-Central American countries;
- (b) machinery, equipment, moulds, tools, spare parts and accessories used exclusively to assemble, process, modify or produce goods or services destined for export to non-Central American countries. The goods referred to in this subparagraph may be disposed of freely after five years have elapsed from the date of their temporary import, subject to prior authorization by the Ministry of Finance and Public Credit (now the Ministry of Finance); and
- (c) sample books, instructional material, patterns, and models needed to bring the production of goods and services into line with the standards and design requirements of the international market and for demonstration, research or educational purposes related to the purposes of the regime.

BENEFICIARY: Any natural or legal person admitted to the temporary import regime.

RAW MATERIAL: All goods of any kind that are incorporated in the end product or service or in the respective production process, or which are subjected to processing for the preparation of intermediate or end products.

SEMI-MANUFACTURES: Goods produced with raw materials, which serve as intermediate elements for the production of other goods or services.

PACKAGING: Goods used essentially to contain any type of product, excluding means of transport such as containers, frames, supports and the like.

MACHINERY AND EQUIPMENT: Goods used to produce other goods or services or to provide a productive service, which are not consumed in a single cycle of production, excluding passenger vehicles and office equipment.

SPARE PARTS AND ACCESSORIES: Those used in the repair and maintenance of machinery and equipment.

CUSTOMS BOND: A guarantee which, without displacement of assets, which remain in the possession of the beneficiary, is posted on the elements that are necessary to the operation of the enterprise, in order to meet payment of the taxes temporarily suspended by virtue of the temporary import regime, as well as payment of the other obligations arising from the same regime, in accordance with the decrees hereby regulated.

LOSS: Any reduction or loss of quantity suffered by imported inputs on account of their inherent characteristics, during their transportation, while they are in customs premises or in the production process.

DAMAGE: Any detriment, impairment or destruction suffered by imported goods, for reasons beyond the control of the beneficiary and which do not correspond to normal wear and tear of the goods concerned.

WASTE PRODUCTS: Residual elements of imported inputs, left over from the production process, which have no commercial value.

INDUSTRIAL ENTERPRISE: For the purposes of the regime, an enterprise engaged exclusively in group 3 activities, "manufacturing industries", of the United Nations International Standard Industrial Classification of all Economic Activities (ISIC).

AGRO-INDUSTRIAL ENTERPRISE: An enterprise which processes raw materials of agricultural origin, including ground crops, tree crops and livestock products.

INPUTS: Goods or services which directly or indirectly contribute to the assembly, processing, modification and production of items exported to non-Central American countries.

TAX LIABILITY: For the purposes of the regime, tax liability means, in the event of non-compliance with the provisions of the decrees and of this Regulation, liability arising from: temporary suspension of payment under any of the points specified in Article 1 of Decree No. 190/86 of 31 October 1986; total exemption from the payment of income tax; fines, surcharges and other penalties for violations of the regime, as well as for violations provided for in the Law on income tax.

SERVICES: Activities of a productive nature, involving the use of inputs which, after processing, are exported to non-Central American companies.

TEMPORARY IMPORT CERTIFICATE: The declaration made by the beneficiary to the relevant customs administration, indicating the applicable tariff nomenclature, the category and amount of the merchandise, and other details needed for its identification, which is accepted by the customs administrator and authorized for import under the regime.

SUBCONTRACTING: The relationship established by the beneficiary, under its own responsibility, with other natural or legal persons in Honduras, in order to carry out manufacturing processes with goods subject to the regime.

COMPLEMENTARITY: The mechanism whereby the beneficiary is entitled to transfer under any title goods or services imported under the regime to other enterprises within the national territory, whether or not they receive benefits under the regime, where the enterprises concerned physically incorporate them or require them to complement or modify other products which are exported to non-Central American countries.

TRANSFER: The transfer under any title of goods imported under the regime to enterprises operating in free zones or export processing zones (ZIP).

RESOLUTION ON AUTHORIZATION: The administrative instrument issued by the State Ministry of the Economy and Trade (now the Ministry of Industry and Trade), whereby a natural or legal person which meets the requirements laid down by the Law and by this Regulation is incorporated.

CHAPTER III BENEFICIARIES

Article 3. Entitlement to participate in the temporary import regime shall be vested in natural or legal persons which are established or are due to establish themselves in Honduras with machinery, equipment, tools, spare parts and accessories, if they are used exclusively to assemble,

process or modify products or services to be exported in their entirety to non-Central American countries, or where appropriate, to be utilized or physically incorporated in such products or services.

CHAPTER IV PROCEDURES

Article 4. The application to participate in the regime must be submitted to the Directorate-General of Industry (now the Directorate-General of Productive Sectors) and shall contain the following basic data: (a) name, company or business name, national tax registration, nationality, domicile, full address, telephone number and other general information on the applicant and his legal representative; (b) specific information on the nature of the application; (c) the machinery, equipment and tools to be used, with an indication of the corresponding production capacity; (d) goods and inputs which are the subject of the request for importation under the regime, with an indication of the corresponding tariff heading and their role in the production process; (e) description of the products to be exported, showing their volume and value, together with the projected volume and value for a three (3) year period, and indicating the main export markets; (f) percentage of imported goods or inputs to be used in the production process; estimated percentage of losses and wastage; description of the goods to be processed under complementarity and/or subcontracting arrangements; (g) timetable for processing and exporting products with the imported inputs; (h) Number of workers to be employed, with an estimate of annual wages, salaries and social benefits for the first three (3) years of operation; (i) estimate of the value added at factor cost for the first three (3) years of operation; (j) estimate of annual net foreign currency earnings to be generated by the company's exports over the first three (3) years of operation; (k) where appropriate, an indication of the raw materials of domestic origin to be used by the company; (l) brief description of the production process; (m) special request for the granting of an importer's and/or exporter's licence; (n) any other information which the Directorate-General of Industry (now the Directorate-General of Productive Sectors) may deem necessary in order to reach a decision on the application.

Article 5. The application referred to in the preceding Article must be accompanied by: (a) a certified public deed or officially recorded instrument attesting to the applicant's status as a legally established company or individual trader, as the case may be, engaged in industrial or agro-industrial activities; (b) copies of the subcontracting or complementarity agreements, as appropriate; (c) any other documents that may be required under the laws in force in Honduras.

Article 6. Upon receipt of the application, the Directorate-General of Industry (now the Directorate-General of Productive Sectors) shall undertake an analysis and evaluation and issue an opinion which, at the very least, must contain an economic assessment of the enterprise, with an indication of the benefits it will bring to Honduras in respect of the following: (a) creation of new jobs, showing the number and composition; annual wages and salaries to be paid by the enterprise; (b) generation of added value; (c) net foreign exchange earnings; (d) workforce training.

Article 7. Admission to the regime shall be granted by means of a Resolution on Authorization, issued by the Ministry of the Economy and Trade (now the Ministry of Industry and Trade), which shall set out the rights and obligations of the beneficiary.

Article 8. The beneficiary shall have the following obligations: (a) those expressly listed in Article 3 of Decree No. 37 of 20 December 1984; (b) to submit every six months to the Ministries of Finance and Public Credit and of the Economy and Trade (now the Ministries of Finance and of Industry and Trade), in the months of January and July of each year, a sworn statement on the volume, value and use of the imported goods, as well as on the value, quantity, class or type and destination of the goods or services exported; (c) to conduct its activity in accordance with the provisions of the authorization resolution and amendments thereto, and to comply with the export deadlines; (d) to obtain authorization from the Ministry of the Economy and Trade (now the Ministry of Industry and

Trade) for any change in the initial plans used as a basis for securing participation in the regime; (e) to supply to the competent authorities whatever data and reports may be requested for the purpose of supervising and monitoring its operations; (f) report to the Ministries of Finance and Public Credit and of the Economy and Trade (now the Ministries of Finance and of Industry and Trade), attaching appropriate documentary evidence, on the imported goods that are delivered to subcontractors, including a description, details of their value, weight and volume, and any other data that may be required; to inform those Ministries of the goods produced by the subcontractors, including a description, details of volume, quantity (specific import unit), weight and value of the goods produced, or any other data that may be required; lastly, to report, again to the same Ministries, on the imported goods utilized under complementarity or transfer mechanisms, again including a description of the goods, details of value, quantity, weight and volume, or any other data that may be required. These reports shall be submitted within five (5) working days of each of the operations concerned; (g) to keep separate accounts for the operations carried out under the regime; (h) any other obligations established by the competent authorities.

CHAPTER V

EXEMPTION FROM INCOME TAX

Article 9. In order to receive the benefit of exemption from income tax referred to in Article 5 of Decree No. 37 of 20 December 1984, as amended by Article 5 of Decree No. 190/86 of 31 October 1986, the enterprise participating in the regime shall attach to its declaration of income the following: (a) a copy of the authorization resolution under which it is admitted to the regime and granted the benefit; (b) a document from the Directorate-General of Customs (now the Executive Revenue Directorate), certifying that its entire output was exported to non-Central American countries either directly or under duly authorized complementarity or transfer arrangements; (c) a document from the Directorate-General of Industry (now the Directorate-General of Productive Sectors) certifying compliance, during the tax period referred to in the declaration, with all obligations arising from the decrees, regulations and the relevant authorization resolution; and (d) in the case of foreign companies, a document issued by the competent Government agency, certifying that the taxes paid in Honduras are not deductible from the taxes payable in the country of origin. The Directorate-General of Taxation shall take such steps as it deems necessary to carry out the supervisory activities for which it is responsible under the Law on Income Tax.

CHAPTER VI

ESTABLISHMENT AND ADMINISTRATION OF GUARANTEES

Article 10. In order to guarantee the possible collection by the State of the suspended payments referred to in Article 1 of Decree No. 37 of 20 December 1984, as amended by Decree No. 190/86 of 31 October 1986, the following procedures are laid down for the establishment and administration of guarantees: (1) guarantees may be posted for each consignment and for half-yearly or yearly import periods. The guarantee shall be posted in favour of the State, in the form of a promissory note, a customs bond, a fixed or floating insurance policy, or in any other form acceptable to the Directorate-General of Customs (now the Executive Revenue Directorate) or the relevant customs administration, subject to consultation in the latter instances with the Ministry of Finance and Public Credit (now the Ministry of Finance). The amount of the guarantee shall in any event be equivalent to at least the total payments to be made to the beneficiary in the event of the latter's not being a party to the regime; (2) if the guarantee only covers a specific import, it shall lapse if it is ascertained that the export of the products to non-Central American countries entails the outward movement of all the imported inputs, taking into account the coefficients or percentages of inputs contained in those products; (3) in the case of machinery, equipment, tools, spare parts and accessories, it shall be sufficient for them to constitute a customs bond, as a guarantee, provided that it covers the total value of the suspended payments, and an additional guarantee must be deposited

where the value of those payments exceeds the CIF value of the goods; (4) no type of guarantee shall be required for sample books, instructional material, patterns, and models.

CHAPTER VII TREATMENT OF WASTE PRODUCTS LOSSES AND DAMAGE

Article 11. For the purposes of issuing an opinion on losses, wastage and damage, the Directorate-General of Industry (now the Directorate-General of Productive Sectors) shall establish processing coefficients for the inputs used, based essentially on the following:

- (a) Coefficients declared by the applicant;
- (b) nature of the goods to be produced;
- (c) technical coefficients or percentages verified in production processes of the company and other similar processes;
- (d) any other means deemed necessary by the Directorate-General of Industry (now the Directorate-General of Productive Sectors).

Article 12. The Directorate-General of Industry (now the Directorate-General of Productive Sectors) shall transmit to the Directorate-General of Customs (now the Executive Revenue Directorate), an authorized copy of the opinion in order to enable it to release from customs the necessary quantities of inputs used in exported products. The Directorate-General of Customs (now the Executive Revenue Directorate) shall effect whatever checks are necessary.

Article 13. The beneficiary shall place at the disposal of the Directorate-General of Customs (now the Executive Revenue Directorate) any waste products or damaged goods that have been released, so that the Directorate may order and supervise their destruction or donation to legally recognized public charities. The Directorate-General of Customs (now the Executive Revenue Directorate) may authorize the definitive importation of damaged goods or waste products with any commercial value, which shall be subject to the tax legislation in force.

CHAPTER VIII CUSTOMS CLEARANCE

Article 14. For the purposes of the benefits granted under the regime, the temporary import application shall be made to the Directorate-General of Customs (now the Executive Revenue Directorate) or the respective customs administration, and shall contain a precise list of the goods or inputs to be cleared through customs, classified according to their respective tariff headings. The Directorate-General of Customs (now the Executive Revenue Directorate) or the relevant customs administration shall check the application against the corresponding authorization resolution under which the applicant was admitted to the regime, and shall authorize customs clearance by means of a temporary import certificate, subject to prior verification of the scope of the guarantee in relation to the amount of the suspended payments covered by the certificate. Once the above-mentioned temporary import certificate has been authorized, and without the need for a prior resolution by the Directorate-General of Customs (now the Executive Revenue Directorate), the customs administrator shall accept the certificate and carry out the necessary customs clearance operation.

Article 15. The re-export of goods or services under the regime shall be formalized by means of a re-export certificate, which shall be used for the control, inspection and release of goods or inputs

subject to the regime, resulting in the refund, discharge or adjustment of the balance of the guarantee lodged; the discharge or adjustment in question shall be in an amount equivalent to the payments suspended by the regime, which must be released upon verification of the coefficients or percentages of inputs used in the products exported to non-Central American countries.

Article 16. The Directorates-General of Customs (currently the Executive Revenue Directorate) and of Statistics and Censuses shall keep an up-to-date register of imports and re-exports effected under the regime, being required to report to the Ministries of Finance and Public Credit and of the Economy and Trade (now the Ministries of Finance and of Industry and Trade) as frequently as is deemed necessary by those Ministries.

CHAPTER IX CONTROL AND SANCTIONS

Article 17. The Directorates-General of Customs and of Industry (now the Executive Revenue Directorate and the Directorate-General of Productive Sectors), through their specialized offices, shall jointly or separately take action vis-à-vis the companies affiliated to the regime, the subcontractors and companies involved in transfer and complementarity arrangements, in order to supervise and monitor compliance with the beneficiary's obligations as laid down in the decrees, this regulation and the authorization resolution.

Article 18. If the beneficiary fails to comply with its obligations arising from the regime by virtue of the decrees establishing the regime, this regulation or the authorization resolution, or makes wrongful use of the benefits accorded under the regime, the Ministry of the Economy and Trade (now the Ministry of Industry and Trade) shall revoke the authorization resolution, declaring null and void the benefits and rights that have been granted or recognized, without prejudice to the relevant legal sanctions.

Article 19. Where the Ministries of the Economy and Trade and of Finance and Public Credit (now the Ministries of Industry and Trade and of Finance), through their competent agencies, find that the goods or inputs imported under the regime and the products assembled, processed, modified or produced with such inputs, are destined for the domestic or Central American market, the Directorate-General of Customs (now the Executive Revenue Directorate) and the Directorate-General of Taxation shall, within their respective spheres of competence, assess the tax liability and impose on the offender a fine equivalent to 100 per cent of the taxes so assessed, with full notification to the offender in order to secure immediate payment.

A beneficiary made subject to such sanctions may lodge the corresponding appeals within thirty (30) working days of the day following the notification.

Where violations are committed by means of subcontracting, complementarity or transfer mechanisms, the beneficiary of the regime shall still be the party held liable by the Treasury.

Article 20. Once the resolution ordering payment of the tax liability together with the fine referred to in the preceding Article has become final, and if the offender makes no payment voluntarily, the relevant facts shall be communicated to the Office of the Attorney-General of the Republic in order for him to enforce payment of the guarantee given and of the corresponding fine.

CHAPTER X GENERAL PROVISIONS

Article 21. The beneficiary shall provide written notification to the Ministry of the Economy and Trade (now the Ministry of Industry and Trade) of the commencement of its exportable production operations, on the first day of such operations.

Article 22. In the event of delay in the commencement of operations referred to in Article 3(c) of Decree No. 37 of 20 December 1984, the Ministry of the Economy and Trade (now the Ministry of Industry and Trade), in response to a written and duly substantiated application from the interested party, shall grant the extension that it deems appropriate.

Article 23. The imported goods qualifying for suspension of the duties specified in the resolution on authorization, subject to a prior opinion by the appropriate administrative entity, shall not include raw materials of agricultural, forestry, livestock and maritime origin which are produced in Honduras under satisfactory conditions and which are used for the processing of exportable products.

Article 24. Subject to authorization by the Ministry of Finance and Public Credit (now the Ministry of Finance), any machinery, equipment, tools, spare parts and accessories that have been imported under the regime may be freely disposed of upon payment of the general sales tax and the 5 per cent customs administrative service tax, after they have been used for a period of five years from the date of their temporary import, with the general sales tax being applied to the corresponding book value on the date of sale and the 5 per cent tax to the CIF import value.

Article 25. The resolution on authorization to participate in the regime may be suspended, amended or cancelled in the following cases: at the request of a party, at the instigation of the Ministry of Finance and Public Credit (now the Ministry of Finance) in the exercise of its authority, and on the advice of the Ministry of the Economy and Trade (now the Ministry of Industry and Trade), in all cases on duly substantiated grounds.

Article 26. The enterprise in receipt of the benefit must compulsorily inform the Directorate-General of Industry (now the Directorate-General of Productive Sectors) and the Directorate-General of Customs (now the Executive Revenue Directorate) of its operations in the following cases: (a) where the beneficiary of the regime subcontracts manufacturing processes to other natural or legal persons in Honduras, using goods or services imported under the regime; (b) where the enterprise in receipt of the benefit transfers under any title the goods imported under the regime to enterprises operating in free zones or in export processing zones (ZIP); (c) where the beneficiaries of the regime assign their products or services under any title to other enterprises within the national territory, and the latter physically incorporate them or require them to complement or modify other products to be exported to non-Central American countries. In the three above-mentioned cases, the enterprises in receipt of the benefit must attach to the report concerned a certified copy of the contract concluded with the enterprise or enterprises with which they are to do business, details of the goods transferred or services rendered and, where appropriate, details of the goods produced with the transferred articles.

Article 27. The Directorate-General of Industry (now the Directorate-General of Productive Sectors) shall provide the interested parties with the instructional material, models and information that it deems appropriate for the proper and expeditious management of the mechanisms of the regime.

Article 28. Matters not provided for in this Regulation shall be resolved in accordance with the applicable statutory provisions, taking into account the spirit and objectives of the regime.

Article 29. This Decision supersedes Decision No. 174/85 of 20 February 1985.

Article 30. This Decision shall enter into force from the date of its publication in the Official Journal "La Gaceta".

JOSE SIMON AZCONA HOYO

CONSTITUTIONAL PRESIDENT

OF THE REPUBLIC

REGINALDO PANTING

Secretary of State in the Offices

of the Economy and Trade

EFRAIN BU GIRON

Secretary of State in the Offices

of Finance and Public Credit

REGARDING EXPORTS TO COUNTRIES IN THE CENTRAL AMERICAN AREA:

Article 2 of Decree No. 39-97 of 28 May 1997, containing the text of the Law on Tariff Equalization, provides as follows:

Goods and services, including electrical power, that are produced under the temporary import regime, may be exported to countries in the Central American area. In the case of enterprises still benefiting from the right to exemption from the payment of income tax, in accordance with the Law, exports to Central America may not be taken into account for the purpose of the said deduction.

REGARDING EXEMPTION FROM THE PAYMENT OF INCOME TAX:

Decree No. 135-94 of 28 October 1994, establishing the Law on restructuring of revenue mechanisms and reduction of public sector expenditure, promotion of production and social compensation, provides in Chapter XI, Article 16, as follows:

"Repeal of Article 5 of Decree No. 37 of 20 December 1984, establishing the temporary import regime, and the amendments thereto.

Notwithstanding the above, natural or legal persons covered by the temporary import regime on the date of this Decree shall continue to enjoy exemption from the payment of income tax up to the date of expiry of the time-limit laid down in the corresponding resolution of the Ministry of the Economy and Trade, provided that they have been legally admitted to the regime and have strictly complied with the obligations set out in Article 3 of Decree No. 37 of 20 December 1984.

No other legal or natural person, as from the date of entry into force of this Decree, shall enjoy the exemption referred to in this regulation".

REGARDING THE FIVE PER CENT CUSTOMS ADMINISTRATIVE SERVICE TAX ESTABLISHED BY DECREE No. 85-84 OF 24 MAY 1984:

Decree No. 131-98 of 20 May 1998 on the Law to promote production, competitiveness and support for human development, in Chapter II, Section III, Article 15, provides as follows:

"Instruct the Executive, subject to a prior resolution by the National Tariff Commission, to reduce to zero per cent (0%) the customs administrative services tax established by Decree No. 85-84 of 24 May 1984 and the amendments thereto, as applied to imports of raw materials and other capital goods as from 1 June 1998".

TEMPORARY IMPORT REGIME

1. Applicable legislation and regulations:

- Law on the Temporary Import Regime
Decree No. 37 of 20 December 1984
- Regulation on the Temporary Import Regime
Decision No. 545-87 of 6 May 1987

Amendments

Decree No. 190-86 of 31 October 1986

- Law on Tariff Equalization
Decree No. 39-97 of 20 May 1997

2. Benefits available under the regime:

Temporary suspension of the payment of customs duties, consular fees, and any other taxes and surcharges, including the general sales tax, on the import of:

- (a) Raw materials, semi-manufactures, packaging and other goods, where they are assembled, processed, modified or physically incorporated in export products;
- (b) machinery, equipment, tools, spare parts and accessories, if they are used exclusively to assemble, process, modify or produce items intended for export. The goods referred to in this subparagraph may be freely disposed of after five years have elapsed from the date of their temporary import, subject to prior authorization by the Ministry;
- (c) sample books, instructional material, patterns and models needed to adjust production to the standards and design requirements of the international market and for demonstration, research or educational purposes;
- (d) it should be pointed out that Decree No. 37-84 of 20 December 1984 and Decree No. 190-86 of 31 October 1986 stipulated that the exports should be made to countries outside the Central American area; however, as from 28 May 1997, exports to Central America are permitted (Decree No. 39-97 of 28 May 1997).

3. Requirements:

The requirements to be met by the application for admission to the temporary import regime are set out in Chapter IV, Articles 4 and 5, of Agreement No. 545-87 of 6 May 1987 containing the Regulation on the Temporary Import Regime.

4. Procedural formalities:

Procedure for dealing with applications to join the temporary import regime (Régimen de Importación Temporal – RIT), or for the amendment or cancellation of the regime:

- (a) Receipt of the application by the Directorate-General of Productive Sectors;
- (b) review of the application and preparation of the opinion and resolution*;
- (c) signature of the opinion by the Director-General, the Head of the Department and the Analyst;
- (d) submission of the opinion and the resolution to the General Secretariat;

- (e) signature of the resolution by the General Secretariat and the Under-Secretary in the Offices of Industry and Trade.

* If the information submitted by the company is incomplete, it shall be served with an order or writ.

If the company does not submit the requested information within the specified period, the file is shelved indefinitely.
