

# WORLD TRADE ORGANIZATION

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Committee on Subsidies and  
Countervailing Measures

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## SUBSIDIES

New and Full Notification Pursuant to Article XVI:1 of the  
GATT 1994 and Article 25 of the SCM Agreement

COSTA RICA

The following communication, dated 5 March 2002, has been received from the Permanent Mission of the Republic of Costa Rica.

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A. THE DUTY-FREE ZONE REGIME

**1. Description of the subsidy**

The Duty-Free Zone Regime is the set of incentives and benefits offered by the State to enterprises making new investments in Costa Rica, subject to compliance with the obligations set down in Law No. 7210 and amendments thereto, and its implementing regulations. One of the qualification criteria is the requirement that at least 75 per cent of the enterprise's production must be exported. The Regulations lay down the definition of "new investments in the country". The establishment location of a group of enterprises operating as beneficiaries of this Regime is called a "Duty-Free Zone", which is required to be a defined area, without a resident population, which is authorised by the Executive to operate in this capacity.

**2. Period of the notification**

This notification provides a description of the Duty-Free Zone Regime as at 1 September 2001. The 2001 calendar year was taken as the basis for the calculation of the statistics used to determine the subsidy amounts.

**3. Policy objective**

The fundamental objective of the Law is to promote the socio-economic development of Costa Rica by attracting foreign investment, domestic investment and the promotion of exports. The duty-free zone regime is an important economic instrument for raising the standard of living of the population of Costa Rica, particularly by creating sources of employment and supporting human development, with a special focus on less-developed areas of the country. This type of regime is conducive to the establishment of enterprises performing a full range of operations and production processes which contribute to the generation of wealth and technological know-how, and increase the country's ability to be competitive internationally.

**4. Background and authority**

Duty-Free Zone Law, Law No. 7210 of 23 November 1990 (full text attached as an Annex to this notification) and amendments thereto<sup>1</sup>.

Regulations implementing the Duty-Free Zone Law – Executive Decree No. 29606-H-COMEX of 18 June 2001 (full text attached as an Annex to this notification).

General Customs Law, Law No. 7557 of 20 October 1995, Section I, Chapter V (Duty-Free Zone Regime) (parts referred to attached as an Annex to this notification<sup>2</sup>) and amendments thereto<sup>3</sup>.

Regulations implementing the General Customs Law, Chapter X (Duty-Free Zone Regime), Executive Decree No. 25270-H of 28 June 1996 (parts referred to attached as an Annex to this notification<sup>4</sup>) and amendments thereto<sup>5</sup>.

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<sup>1</sup> The amendments to Law 7210 of 23 November 1990 are contained in Law 7467 of 20 December 1994, Law 7535 of 1 August 1995, Law No. 7638 of 30 October 1996, Law No. 4924 of 17 September 1997 and Law No. 7830 of 22 September 1998 (full texts of this legislation attached as an Annex to this notification).

<sup>2</sup> The full text is available for examination in the archives of the Legislative Division, Ms S. Aspinall, office 1028, telephone 739 51 09.

<sup>3</sup> The amendments to the General Customs Law, Law No. 7557 of 20 October 1995 are contained in Law 7900 of 3 August 1999 (available for examination in the archives of the Legislative Division).

<sup>4</sup> The full text is available for examination in the archives of the Legislative Division.

## 5. Form of subsidy

The subsidy is essentially an exemption from payment of all taxes, consular fees and duties. The subsidy is provided in the manner set out below.

The incentives granted by this regime are:

- (a) Exemption from all tax and consular fees on imports of raw materials, manufactured and semi-manufactured products, components and parts, packing and packaging materials, and other goods and merchandise required for the operation of the enterprise;
- (b) exemption from all tax and consular fees on imports of machinery, equipment, accessories and spare parts, and on automotive vehicles required for the operation, production, administration and transport activities of the enterprise;
- (c) exemption from all tax and consular fees on imports of fuel, oil and lubricants required for the operation of such enterprises;
- (d) exemption from all tax relating to the export or re-export of products. This exemption is granted for the re-export from the Zones of production machinery and equipment which entered pursuant to the law;
- (e) exemption from payment of tax on capital and net assets, and payment of land tax;
- (f) exemption from sales and consumption tax on purchases of goods and services;
- (g) exemption from all taxes on remittances abroad;
- (h) exemption from all taxes on profits, and any other taxes for which the tax base is determined according to gross or net earnings, dividends paid to shareholders, or revenue or sales;
- (i) exemption from any municipal tax or business tax;
- (j) exemption from any taxes on imports or exports of commercial or industrial samples;
- (k) to enhance their business operations, enterprises covered by the Duty-Free Zone Regime may freely execute all kinds of deeds and contracts in foreign currency with respect to international transactions or transactions with other enterprises established under the Duty-Free Zone Regime;
- (l) enterprises based in relatively less-developed areas are entitled to a credit of 10 per cent of the amount paid as wages and salaries during the previous year, with that

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<sup>5</sup> The amendments to the Regulations implementing the General Customs Law, Chapter X (Duty-Free Zone Regime), Executive Decree No. 25270-H of 28 June 1996 are contained in Executive Decree 25295 of 17 June 1996 (available for examination in the archives of the Legislative Division), Executive Decree 26285 of 18 August 1997 (full text attached as Annex to this notification), Executive Decree 26961 of 30 March 1998 (available for examination in the archives of the Legislative Division), Decree 27717 of 23 February 1999 (available for examination in the archives of the Legislative Division), Executive Decree 28242 of 30 September 1999 (available for examination in the archives of the Legislative Division) and Executive Decree 28976 of 27 September 2000 (available for examination in the archives of the Legislative Division).

percentage decreasing by two percentage points per annum, through to its termination in the fifth year;

- (m) export processing enterprises operating as beneficiaries of the Duty-Free Zone Regime which, on completion of four years of operation under that Regime, reinvest in the country may be granted an additional exemption from payment of income tax, for a percentage corresponding to the ratio of the reinvestment to the original investment.

The above exemptions remain subject to fulfilment of certain specific requirements laid down by Laws and Regulations, and international agreements signed and approved by the country.

## **6. Beneficiaries and mechanism**

The following types of enterprise qualify for the Duty-Free Zone Regime:

- (a) Export processing industries which produce, process or assemble for export or re-export;
- (b) export trading enterprises, with no production activity, which merely handle, re-pack or re-distribute non-traditional merchandise and products for export or re-export;
- (c) service industries and enterprises which export services to natural or legal persons domiciled abroad, or provide the services to companies which are beneficiaries of Duty-Free Zone Regime, in the latter case provided that the services are directly related to the production process of the companies which are beneficiaries of the Duty-Free Zone Regime;
- (d) enterprises managing industrial parks where enterprises are to be based under the Duty-Free Zone Regime, provided that the parks meet certain minimum conditions regarding infrastructure and availability of services, in according with the Regulations implementing the Law;
- (e) enterprises or entities engaged in scientific research to raise the technological level of the country's industrial or agribusiness activity and foreign trade;
- (f) enterprises operating shipyards or dry or floating docks for the construction, repair or maintenance of ships.

Export trading enterprises do not qualify for the exemptions under indents (g) and (h) of section A.5 of this notification. In this context it should be noted that the great majority of enterprises operating under the Duty-Free Zone Regime are export processing industries rather than export trading enterprises.

Banking, financial and insurance entities based in duty-free zones do not qualify for the benefits of this Regime. Neither do natural or legal persons engaged in providing professional services qualify for the Regime.

There are several stages in the granting of Regime status:

- (a) The natural or legal person wishing to join the Duty-Free Zone Regime is required to submit the relevant application to the Corporation<sup>6</sup> (rights and obligations currently vested in the Foreign Trade Promotion entity (PROCOMER)), pursuant to Article 13(a) of Law No. 7638 of 30 October 1996), to be duly authenticated by a Notary Public, and to be accompanied by detailed information on the pollution caused by the process and its waste and the documents requested by the Board of Directors of the Corporation. Generally speaking, all applications must comply with the relevant instructions issued by the Corporation.
- (b) The Corporation examines the application and information included, subject to provision of all the required details, and forwards an opinion to the Board of Directors, which is then required to decide on the matter by no later than at the ordinary meeting following receipt of the opinion, or at an extraordinary meeting if so agreed by four of its members.
- (c) At its discretion, the Corporation may seek specialist opinions from various State institutions to assist its examination of the enterprise's application.
- (d) If the recommendation is approved, it is then ratified by the Executive, by a resolution citing the details specified in the Regulations implementing the Law.

## **7. Estimated amount of the subsidy**

Since this subsidy involves exemptions from a number of different taxes and consular fees, which vary according to the level of compliance with the specified requirements, the comprehensive information required to estimate the amount of the subsidy is not available.

## **8. Duration of the subsidy**

The Regime benefits apply as from the point in time when Duty-Free Regime status is granted to the enterprises applying for that status. Except in the case of cancellation of Regime status by the Ministry of Foreign Trade, relinquishment by the beneficiary enterprise and specific exceptions for any of the incentives as set out below, Duty-Free Zone status is held for an indefinite term.

Of the incentives described in No. 5 of this notification, the following are subject to a specific expiry date:

- Exemption from taxes on capital and net assets, and payment of land tax, for a period of ten years.<sup>7</sup>
- exemption from all taxes on profits and any other tax for which the tax base is determined according to gross or net earnings, dividends paid to shareholders or revenue or sales<sup>8</sup>, according to the following distinctions:
  - (a) For enterprises based in "relatively more developed areas", the exemption is 100 per cent for a period of up to eight years, and 50 per cent for the following four years.

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<sup>6</sup> "Corporation" means "Corporación de la Zona Franca de Exportaciones S.A." (Export Duty-Free Zones Corporation, public limited company), pursuant to the General Customs Law, Law No. 7557 of 20 October 1995.

<sup>7</sup> See section 5(e) of this notification.

<sup>8</sup> See section 5(h) of this notification.

- (b) For enterprises based in "relatively less developed areas", the exemption is 100 per cent for a period of up to 12 years, and 50 per cent for the following six years.
- (c) For export processing enterprises which, after operating for four years under the Regime, make investments in Costa Rica, there is a possibility of a further exemption of 75 per cent for up to four years, depending on the reinvestment amount.
- Exemption of all municipal tax and business tax for a period of 10 years.<sup>9</sup>

## 9. Trade effects of the subsidy

At the present time there are 299 enterprises receiving the benefits of the Duty-Free Zone status. Between them, those firms generated 47 per cent of the total exports of Costa Rica in 2001, as compared with 1991, when 81 enterprises covered by the regime accounted for only 9.3 per cent of total exports.

The vigorous activity of Duty-Free Zone firms can be seen not just from the quantity of exports, which have grown by a factor of 13 over the last decade, but also from the positive impact on the economy from the point of view of generating employment. Duty-Free Zone firms directly employ more than 34,000 workers, around three-quarters of whom are manual workers or citizens with a low level of educational qualifications.

Along with this favourable socio-economic impact, the establishment of high-technology enterprises has been conducive to technology transfer and the development of a significant knowledge-based industry in the domestic market, plus a specialised and highly competitive labour force.

Costa Rica: Total Exports and Duty-Free Zone Exports  
In Million US\$

	1999	2000	2001
Duty-Free Zone	3,591.9	2,980.2	2,377.5
<b>Total exports</b>	<b>6,719.0</b>	<b>5,897.5</b>	<b>5,040.0</b>

## B. THE INWARD PROCESSING REGIME

### 17. Description of the subsidy

The inward processing regime is the Customs regime allowing the entry of merchandise into the national Customs territory with suspension of all kinds of taxes, subject to lodgement of a guarantee deposit. The goods must be re-exported, within time-limits laid down in the relevant regulations, after undergoing processing, repair, reconstruction, installation, assembly, or after being incorporated in sub-assemblies, machinery, transport equipment in general or appliances with a higher degree of technological or functional complexity, or after being used for other similar purposes, in situations as laid down in regulations or provisions stipulated for this purpose by the competent administrative authority.

Applications for a transition period for the Inward Processing Regime refer solely to exemptions from import duties and indirect taxes meeting one of the conditions laid down in paragraphs (g), (h) or (i) of Annex I to the SCM Agreement.

<sup>9</sup> See section 5, (i) and (m) of this notification.

## **18. Period of notification**

This notification provides a description of the Inward Processing Regime as at 1 September 2001. The 2001 year was taken as the basis for the calculation of the statistics used to determine the subsidy amounts.

## **19. Policy objective**

The inward processing regime is designed to promote production, employment, and foreign and domestic investment, which inevitably contributes towards increasing exports and domestic consumption. The conjunction of all these aspects helps to achieve national development objectives such as raising the standard of living of the population, increasing income levels, reducing unemployment and increasing the country's productivity and ability to compete internationally.

## **20. Background and authority**

General Customs Law, Law No. 7557 of 20 October 1995, Chapter VI (Processing Regimes) (parts referred to attached as an Annex to this notification<sup>10</sup>) and amendments thereto<sup>11</sup>.

Regulations implementing the General Customs Law, Chapter XIII (Inward Processing Regime), Executive Decree No. 25270-H of 28 June 1996 (parts referred to attached as an Annex to this notification<sup>12</sup>) and amendments thereto<sup>13</sup>.

Regulations on the Inward Processing and Duty Refund Regimes – Executive Decree No. 26285-H-COMEX of 19 August 1997 (full text attached as an Annex to this notification) and amendments thereto<sup>14</sup>.

## **21. Form of subsidy**

The inward processing subsidy allows the entry of merchandise into the national Customs territory with suspension of all kinds of taxes, subject to lodgement of a guarantee deposit. The goods must be re-exported, within time-limits laid down in the relevant regulations, after undergoing processing, repair, reconstruction, installation, assembly, or after being incorporated in sub-assemblies, machinery, transport equipment in general or appliances with a higher degree of technological or functional complexity, or after being used for other similar purposes, in situations as laid down in regulations or provisions stipulated for this purpose by the competent administrative authority.

## **22. Beneficiaries and mechanism**

To qualify for the Regime, the enterprise must choose one of the options available:

- (a) 100 per cent re-export option: enterprises choosing this option may not sell their products on the domestic market;

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<sup>10</sup> The full text is available for examination in the archives of the Legislative Division.

<sup>11</sup> Cf. Note 3.

<sup>12</sup> The full text is available for examination in the archives of the Legislative Division.

<sup>13</sup> Cf. Note 5.

<sup>14</sup> The amendments to the Regulations implementing the Inward Processing and Duty Refund Regimes – Executive Decree No. 26285-H-COMEX of 19 August 1997 are contained in Executive Decree 27329 of 26 August 1998 and Executive Decree 29055 of 31 October 2000 (full texts attached as an Annex to this notification).

- (b) re-export and domestic sale option: under this option enterprises may sell the goods on the domestic market or simply re-export them.

Enterprises operating under the "domestic sale" option are required to pay the full tax payable for the definitive importation of the goods. Similarly, on the entry of the machinery and equipment under the regime, they are required to pay the proportion of tax corresponding to the percentage of sales on the domestic market as a ratio of the total sales of the enterprise.

The obligations for regime beneficiaries include the following: to submit reports on all their operations to the Management of PROCOMER; to keep a log of operations carried out under the regime; prior to commencing operations, to apply to the Directorate-General of Customs for permission to operate as a Customs Agent; to keep goods entering under the regime in authorized premises or plants; to keep a separate inventory control system and accounting records for operations carried out under the regime; to comply with Customs legislation requirements, etc.

### **23. Estimated amount of the subsidy**

The information required to estimate the amount of the subsidy granted under this regime is not available.

### **24. Duration of the subsidy**

The Regime benefits apply as from the date of issue of the authorization to commence activities under the Inward Processing Regime. Except in the event of the revocation of the Regime by the Ministry of Foreign Trade, or relinquishment by the enterprise covered by the Regime, the benefits granted by this Regime continue for an indefinite term.

### **25. Trade effects of the subsidy**

The Inward Processing Regime provides employment for approximately 17,000 persons, and contributes around 7 per cent of the total exports of Costa Rica.

The majority of exports under the Inward Processing Regime are sent to the North American market, and to a lesser extent to South America and the Central American region.

It should be noted that a considerable proportion of the firms operating under this regime are located in areas with little urban development, and accordingly represent a very significant source of employment for the area.

Costa Rica: Total Exports and Inward Processing Exports  
In Million US\$

	<b>1999</b>	<b>2000</b>	<b>2001</b>
Inward processing	370.5	392.3	345.0
<b>Total exports</b>	<b>6,719.0</b>	<b>5,897.5</b>	<b>5,040.0</b>



## **Duty-Free Zone Regime Law**

### **Law No. 7210**

#### **Chapter 1. Export Duty-Free Zones**

##### Article 1

The Duty-Free Zone Regime is the set of incentives and benefits offered by the State to enterprises making new investments in the country, subject to compliance with the other requirements and the obligations laid down in this Law and its implementing regulations. The regulations will set out the definition of new investments in the country. The enterprises operating as beneficiaries of this Regime must be engaged in the manipulation, processing, manufacture, production, repair or maintenance of goods and the provision of services intended for export or re-export, except as specified in Articles 22 and 24 of this Law. The establishment location of a group of enterprises operating as beneficiaries of this Regime shall be referred to as a "duty-free zone", and shall be a defined area, without a resident population, which is authorized by the Executive to operate in that capacity. Duty-Free Zone Regime status shall be granted only to enterprises with projects involving a initial new investment in fixed assets of at least one hundred and fifty thousand US dollars (US\$150,000.00) or the equivalent in local currency.

Small enterprises forming consortia for joint participation in directly carrying out export processing activities may meet the minimum investment amount requirement stated in this Article by adding together the investment amount of each enterprise in the consortium, in accordance with the provisions of the implementing regulations of this Law. For this purpose, a "small enterprise" means an enterprise employing no more than twenty staff.

To qualify for Duty-Free Zone Regime status, enterprises must meet all environmental protection standards laid down in Costa Rica legislation and international law for the performance of economic activities in a sustainable manner.

(Modified by Law 7830 of 8 October 1998)

#### **Chapter 2. The Corporation**

##### Article 2

Corporación de la Zona Franca de Exportación, Sociedad Anónima (Export Duty-Free Zone Corporation public limited company), entered in the Public Register, Commercial Section, volume No. 183, folio No. 392, position No. 399, shall have the status of a mixed-capital State private enterprise. The Corporation shall be governed by this Law, its implementation regulations and general commercial law.

The Corporation shall be audited by the office of the Auditor General of the Republic, whose rulings shall be binding on the Corporation.

##### Article 3

The objective of the Corporation shall be the promotion, administration and monitoring of the duty-free zone regime.

##### Article 4

The powers of the Corporation shall be as follows:

- (a) To promote the formation and establishment of Duty-Free Zones;
- (b) to issue recommendations on permits for enterprises wishing to become established in Duty-Free Zones, and to forward and regulate permit documents, in coordination with the relevant Government institutions;
- (c) as an exceptional and temporary measure, to take over the administration of duty-free zones in situations where Duty-Free Zone Regime status of an administration enterprise has been suspended or revoked;
- (ch) to lease out properties and land, whether owned by the Corporation or entrusted to the Corporation as administrator, on which the enterprises involved can build, have built or alter for their own account structures designed to meet their specific requirements. All structures and improvements executed in Corporation properties shall pass into the ownership of the Corporation at the end of the lease unless the owner is able to dismantle and remove them, for its own account, within the deadline specified by the Corporation;
- (d) to sell Corporation properties and land, at prices not less than the amount determined by a valuation made for this purpose by the Directorate-General of Direct Taxes;
- (e) to coordinate with the relevant institutions the establishment of the required Customs, security and health facilities, in accordance with the requirements and recommendations of the Ministry of Finance and the Ministry of Health, and of the National Insurance Institute, as applicable;
- (f) to carry out, and commission and coordinate with the relevant State institutions, the construction of the required infrastructure and public services for the satisfactory attainment of its objectives;
- (g)
- (h) to specify the amount of a guarantee deposit, in accordance with Article 9 (ch) of this Law, to be lodged in the Corporation's favour by enterprises accepted as beneficiaries of the Duty-Free Zone Regime. This guarantee may be used by the Corporation to settle any debts contracted by the guarantor enterprise with the Corporation which are still outstanding at the time of the revocation of the Executive Decision;
- (i) to ensure that Duty-Free Zone administration enterprises construct the required child care centres within their industrial parks for workers' children aged between 0 and 5 years. The administrators of the park shall lease this service out to enterprises based in the park.  
  
They shall also arrange the construction of recreation areas in each park for the use of the workers;
- (j) to recruit staff required for the satisfactory operation of the Corporation;
- (k) to perform any other legitimate actions as required for the attainment of its objectives.

(Modified by Law No. 7830 of 8 October 1998)

(Amended by Law No. 7467 of 20 December 1994)

#### Article 5

The Corporation is obliged to comply, as applicable, with the directives on the promotion and attraction of foreign investment issued by the Executive.

#### Article 6

The State shall retain at least fifty-one per cent (51 per cent) of the share capital of the Corporation, and may dispose of the remaining forty-nine per cent (49 per cent), for a financial consideration, to private-sector enterprises. No natural or legal person or economic interest group may own any more than zero point five per cent ( 0.5 per cent) of the shares in the Corporation.

For the purposes of this Article, "economic interest group" means any grouping of firms to which the following applies: grouping with a single decision-making or accounts control centre; cross-guarantees between the firms or dependence of one or more firms on the other firm or firms. Also regarded as an "economic interest group" for the purposes of this Article is a grouping of natural persons who are spouses, ascendants, descendants or siblings, or who are related by up to the third degree of consanguinity, inclusive. The shares shall be registered shares.

Any transfer of its shares carried out by the State must be at the market value of the shares at the time of the transaction, as determined by the office of the Auditor General of the Republic. The determination of the value must include at least the following variables: earnings per share, and book value of the share.

The proceeds from such transfers carried out by the State shall be allocated to the Corporation.

#### Article 7

All the incentives and benefits specified in this Law for enterprises operating under the Duty-Free Zone Regime shall be granted to the Corporation, which shall also be exempt from payment of the component taxes and duties it would normally be required to pay under any of the contracts executed by the Corporation.

### **Chapter 3. Organization of the Corporation**

#### Article 8

The Board of Directors of the Duty-Free Zone Corporation shall comprise:

- (a) The Minister of Foreign Trade, as Chairman;
- (b) a representative of the Executive, designated by the Government Council;
- (c) a representative of the Chamber of Industries;
- (ch) a representative of the Chamber of Exporters;
- (d) a representative of the Local Government Union;
- (e) a representative of the shareholders.

The members referred to in indents (c), (ch) and (d) shall be chosen by the Government Council from short lists submitted by each of the Chambers and the Local Government.

The Directors must have past experience in at least one of the following areas: administration, industry and export, and must also have a reputation of personal integrity.

The Minister of Foreign Trade may only be represented by his or her temporary replacement in that portfolio, or by the Deputy Minister of Foreign Trade.

Apart from the Minister of Foreign Trade, who is a member ex officio, the term of office of the members of the Board of Directors shall be two years, renewable once.

The members of the Board of Directors shall elect from their ranks a Deputy Chairman, a Secretary and three executive members, who shall be appointed for one year and may be re-elected for further terms. All of them shall have speaking and voting rights. The Chairman shall have a casting vote. Their remuneration per meeting shall be determined by the Shareholders' Meeting.

The shareholders' representative shall be appointed by the Shareholders' Meeting of the Corporation.

#### Article 9

The roles of the Board of Directors shall be as follows:

- (a) To formulate the policies of the Corporation;
- (b) to submit recommendations to the Executive on the granting and revocation of Duty-Free Zone Regime status for enterprises, at its discretion;
- (c) to determine the fees payable for the use of the Duty-Free Zone Regime, the amounts of which shall be specified in the Regulations implementing this Law;
- (ch) to issue regulations laying down the amount, form and conditions for the guarantee deposit to be lodged by enterprises covered by the Regime;
- (d) to appoint the General Manager of the Corporation;
- (e) to appoint the Internal Auditor of the Corporation for an indefinite term; the Internal Auditor may be removed from office only for good cause, and with the approval of the office of the Auditor General of the Republic;
- (f) to commission the services of external auditors;
- (g) to suggest modifications to current laws and regulations.

#### Article 10

The General Manager shall represent the Corporation before the Courts and in extrajudicial transactions, with a general power of attorney in the widest terms, not subject to any maximum amount. The General Manager shall be appointed for a four-year term, and may be re-elected for successive terms.

The General Manager shall manage all the general business of the Corporation, and where he/she sees this is appropriate shall bring issues to the attention of the Board of Directors. The

General Manager shall also attend meetings of the Board of Directors, with speaking rights but no voting rights, except for meetings discussing the appointment, re-election or dismissal of the General Manager.

#### **Chapter 4. Relationships with other institutions**

##### Article 11

The Ministry of Public Works and Transport shall give priority to improvements to airports, highways, roads and other transport facilities situated in the vicinity of Duty-Free Zones.

##### Article 12

The supervision and monitoring of the fiscal regime of Duty-Free Zones shall be the responsibility of the Ministry of Finance, in accordance with this Law, its implementing regulations and other fiscal legislation.

##### Article 13

The areas where enterprises covered by the Duty-Free Zone Regime are located shall be declared as a Primary Customs Zone.

The use of a Customs agent shall be required solely for operations carried out by enterprises covered by the Duty-Free Zone Regime within the national Customs territory.

(Modified by Law 7830 of 8 October 1998)

##### Article 14

The administrators of parks and enterprises covered by the Duty-Free Zone Regime shall provide the Directorate-General of Customs with all the facilities and assistance it requires in order to perform its responsibilities relating to the monitoring and inspection of materials and merchandise entering and leaving the Duty-Free Zones.

Similarly, the said administrators shall provide the Ministry of Foreign Trade and PROCOMER with the facilities and assistance they require in order to carry out their functions in connection with enterprises operating as beneficiaries of the Duty-Free Zone Regime.

(Modified by Law No. 7830 of 8 October 1998)

##### Article 15

The Ministry of Health shall decide within 20 business days on applications for health permits for the installation and operation of enterprises under the Duty-Free Zone Regime. If the Ministry has not given a ruling within that deadline, the application shall be regarded as approved.

##### Article 16

The waste, by-products and scrap thrown away by enterprises covered by the Duty-Free Zone Regime shall be owned primarily by the municipality in which the enterprises are based, provided that the material can be treated locally or nationally without endangering the population; in this situation, the municipalities shall be permitted to sell the material directly. If the waste, by-products and scrap

cannot be treated locally or nationally, it shall be the responsibility of the enterprise to arrange suitable treatment.

If any party producing or selling goods similar to those thrown away by enterprises covered by the Duty-Free Zone Regime believes the manner in which the waste, by-products and scrap is being managed by the municipality is encroaching on its interests may lodge a complaint with the Ministry of the Economy, Industry and Trade. The Ministry shall rule in favour of the complainant if it is found to be clearly disadvantaged. The Ministry of the Economy, Industry and Trade shall issue regulations laying down the procedure to be followed for the resolution of such disputes.

(Modified by Law No. 7830 of 8 October 1998)

## **Chapter 5. The beneficiaries**

### **Article 17**

Enterprises covered by the Duty-Free Zone Regime are classified as follows:

- (a) Export processing industries which produce, process or assembly for export or re-export;
- (b) export trading enterprises, with no production activity, which merely manipulate, repackage or redistribute non-traditional merchandise and products for export or re-export;
- (c) service industries and enterprises which export services to natural or legal persons domiciled abroad, or provide the services to companies which are beneficiaries of Duty-Free Zone Regime, in the latter case provided that the services are directly related to the production process of the companies which are beneficiaries of the Duty-Free Zone Regime;

Banking, financial and insurance entities based in duty-free zones do not qualify for the benefits of this Regime. Neither do natural or legal persons engaged in providing professional services qualify for the Regime.

- (ch) enterprises administering industrial parks intended for occupation by enterprises operating under the Duty-Free Zone Regime, provided that the parks meet the minimum conditions in terms of infrastructure and the availability of services as set out in the regulations implementing this Law. Such enterprises shall qualify for the exemptions specified in Article 20, provided that the industrial park developed by them is occupied solely by enterprises covered by the Duty-Free Zone Regime. If enterprises not covered by the Duty-Free Zone Regime set up in the park, the administrator shall forfeit the exemption referred to in Article 20(g) from that time, and the other exemptions shall be reduced on a pro rata basis, in the same way as in the case of sales in the national Customs territory pursuant to Article 22;
- (d) enterprises or entities engaged in scientific research to raise the technological level of the country's industrial or agribusiness activity and foreign trade;
- (e) enterprises operating shipyards or dry or floating docks for the construction, repair or maintenance of ships.

(Modified by Law No. 7830 of 8 October 1998)

## Article 18

National and foreign natural or legal persons conducting activities in the Duty-Free Zones according to this Law and persons included in the relevant executive decisions are entitled to perform the following actions:

- (a) Introduce, store, exhibit, pack, unpack, manufacture, process, produce, install, assemble, refine, distil, purify, mix, transform and manipulate any kind of merchandise, products, raw materials, components, packaging material, packaging and other tradable items intended for export or re-export, with the exceptions of items whose importation, marketing or manufacture are prohibited by Laws of the Republic, without prejudice to the provisions of Articles 22 and 24 of this Law;
- (b) provide and commission services to and from enterprises based in Duty-Free Zones and from natural and legal persons domiciled abroad, such as the following: finance, insurance, shipment, freight forwarding, documentation, supply, lease of buildings, maintenance and other services consistent with the operation of the Duty-Free Zone or the regime in general.

Enterprises engaged in the provision of banking or financial services must comply with the rules of the National Banking System and related rules, and by the relevant regulations in place;

- (c) generally, to execute all types of deeds required for the establishment and operation of the Duty-Free Zones, subject to compliance with Costa Rica legislation;
- (ch) in exceptional cases, and only where the characteristics of the production process or nature of the project prevent the activity being carried out within an industrial park, Duty-Free Zone Regime status may be granted to export processing enterprises, such that they are permitted to base their operation outside an industrial park, provided that the initial fixed asset investment is at least two million United States dollars (US\$2,000,000.00) or the equivalent in local currency, and subject to compliance with other regulatory requirements. For the granting of Duty-Free Zone Regime status outside an industrial park, the Ministry of Foreign Trade must have received a favourable assessment from the Ministry of Finance, which is required to pronounce on the matter within 15 business days of receiving the copy of the application in question. If no response has been received by the end of that time-limit, the assessment of the Ministry of Finance shall be deemed to be favourable.

Similarly, in exceptional cases, for reasons of the availability of workers, transport or raw material handling capacity, or for another reason, confirmed by regulation and prior express authorization from PROCOMER, enterprises covered by the Duty-Free Zone Regime which are located in an industrial park may set up satellite plants outside the zone, which shall be incorporated under the terms and conditions of the Executive Decision authorizing the enterprise to operate in this manner. The plant based within the park must carry out a significant proportion of the total production in relation to the plants based outside the park, and must comply with the requirements laid down by PROCOMER in this regard. In addition, all imports of raw materials, machinery and other items, and the export of the final product, must be arranged from the plant located within the industrial park, except in special cases duly authorized by PROCOMER.

Duty-Free Zone Regime status may not be granted in the two situations referred to in the preceding paragraphs if the enterprises in question do not have the relevant tax and Customs supervision arrangements in place.

(Modified by Law No. 7830 of 8 October 1998)

## **Chapter 6. Obligations of enterprises**

### **Article 19**

The beneficiaries of the Duty-Free Zone Regime are subject to the following obligations:

- (a) To record and log the operations of the enterprise, in specific books and records approved by the Corporation, relating to goods qualifying for tax exemptions authorized by the Ministry of Finance, which shall be subject to inspection by the Corporation and tax authorities;
- (b) to provide the competent authorities with reports requested by them on the use and intended purpose of articles imported under this Law, and to allow them to carry out such checks as the authorities see fit to perform;
- (c) to provide, free of charge or on loan to an official authority so requesting, samples of the items produced, for display at international exhibitions involving the country's participation;
- (ch) to sign an Operating Contract with the Corporation;
- (d) to provide reports on levels of employment, investment, domestic value added or other reports as specified in the Executive Decision granting Regime status. Compliance with this obligation shall be an essential requirement for receiving the incentives under this Law;
- (e) to use the Customs declaration, seals and other instruments required under laws or regulations for the documentation and monitoring of its operations;
- (f) for enterprises administering industrial parks and enterprises granted Duty-Free Zone Regime status outside the industrial park and satellite plants, to establish the required supervision in relation to the entry and exit of merchandise, contracts and other requirements laid down in the relevant laws and regulations;
- (g) to comply with any other obligations and conditions imposed on beneficiaries in Executive Decisions granting Duty-Free Zone Regime status, the regulations implementing this Law and the Operating Contracts signed with the Corporation.

(Modified by Law No. 7830 of 8 October 1998)

## **Chapter 7. Incentives**

### **Article 20**

Enterprises operating under the Duty-Free Zone regime shall receive the following incentives, with the exceptions indicated below:

- (a) Exemption from payment of all taxes and consular fees on imports of raw materials, manufactured or semi-manufactured products, components and parts, packing and packaging materials, and any other merchandise and goods required for their operations.



In cases where domestic raw materials are available, enterprises must use these first, if the Directorate-General of Industry makes an objective determination that the domestic raw materials meet the same conditions of price, quality and timeliness required by the enterprises. This assessment procedure shall be carried out if the domestic producer of the raw material lodges an application to that effect, with the Directorate-General of Industry and, following the granting of Duty-Free Zone Regime status, with the enterprise in question;

- (b) exemption from all taxes and consular fees charged on imports of plant and equipment, on accessories and spare parts for such plant and equipment, and on imports of motor vehicles required for their operation, production, administration and transport activities.

The vehicles and vehicle parts eligible for exemptions shall be the following:

- Chassis and cabin of vehicles with one to two tonnes load capacity;
- trucks or truck chassis;
- pick-ups with one to two tonnes load capacity;
- vehicles with capacity for at least 15 passengers.

These exemptions shall be conditional upon full compliance with the Executive Decision granting the exemption in question.

Machinery or equipment which has been imported duty-free more than five years previously may be freely transferred, used for a different purpose or brought into the national territory, without the requirement to pay any tax.

Vehicles purchased by enterprises covered by the Duty-Free Zone Regime may transit via the national territory; the enterprises shall obtain the appropriate permits for that purpose from the relevant authorities.

If persons operating within national Customs territory purchase such vehicles, they must pay the relevant taxes for both transit and import into the national territory, with no exemption from payment as per the preceding paragraph on the basis of the passage of time.

It should be noted that, if the person purchasing a vehicle from an enterprise covered by the Duty-Free Zone Regime is entitled to exemptions for such a purchase, the person is covered by the exemptions;

- (c) exemption from all tax and consular fees payable on imports of fuel, oil and lubricants required for the operation of the enterprises. This exemption shall be granted solely where these goods are not produced within the country with the required quality, quantity and timeliness. For imports of these items, the Ministry of the Economy, Industry and Trade must grant prior authorization, giving a ruling with statement of reasons within a maximum deadline of 15 business days;
- (ch) exemption from all taxes relating to the export or re-export of products. This exemption shall be granted for the re-export from the Zones of production machinery and equipment which entered pursuant to this Law;

- (d) exemption from a period of 10 years from commencement of the operations from payment of taxes on capital and net assets, land tax and or tax on the conveyance of real estate;
- (e) exemption from sales and consumption tax on purchases of goods and services;
- (f) exemption from all tax payable on remittances abroad;
- (g) exemption from all taxes on profits, and any other taxes for which the tax base is determined according to gross or net earnings, dividends paid to shareholders, or revenue or sales, according to the following distinctions:

1. For enterprises based in "relatively more developed areas", the exemption shall be one hundred per cent (100 per cent) for a period of up to eight years, and fifty per cent (50 per cent) for the following four years.

2. For enterprises based in "relatively less developed areas", the exemption shall be one hundred per cent for a period of up to 12 years, and fifty per cent (50 per cent) for the following six years.

The durations shall be calculated from the starting date of the production operations of the beneficiary enterprise, provided that that date is no more than two years after the publication of the relevant executive decision.

The exemptions referred to in this paragraph shall not apply where the prospective beneficiary is entitled to discount in its country of origin the taxes exempted in Costa Rica.

In the definition of "relatively more developed and less developed zones", the Corporation shall have regard to the rules laid down by the Ministry of National Planning and Economic Policy for this purpose;

- (h) exemption from all municipal tax and business tax for a period of ten years. The enterprises covered by this Article shall be required to pay for the municipal services they use. In this situation, the municipality in question shall be entitled to charge up to double the tariffs laid down by law for these services. Notwithstanding the preceding, enterprises based in Duty-Free Zones shall be entitled to commission these services from any natural or legal person;
- (i) exemption from all taxes on the import or export of commercial or industrial samples, subject to prior authorization from the Corporation;
- (j) to enhance their business operations, enterprises covered by the Duty-Free Zone Regime may freely execute all kinds of deeds and contracts in foreign currency – in which case the amounts must be paid in that currency – with respect to its international transactions or transactions with other enterprises established under the Duty-Free Zone Regime.

The enterprises covered by the Duty-Free Zone Regime shall be freely entitled to hold and manage the foreign currency they acquire according to the provisions of the preceding paragraph or arising from their ordinary business activity, and they shall be exempted from application of the foreign exchange regulations. The Banco Central shall lay down rules for this entitlement and activities deriving therefrom. Those rules shall be an essential requirement for entitlement to this benefit.

The local currency requirements of these enterprises must be transacted solely via the authorized commercial banks, for which purpose the foreign currency they hold shall be converted into local currency.

- (k) enterprises based in duty-free zones located in "relatively less developed" zones according to the classification applied by the Ministry of Foreign Trade, with prior report from the Ministry of National Planning and Economic Policy, shall be entitled to receive a credit equal to ten per cent (10 per cent) of the amount paid as wages and salaries during the previous year, after deduction of the amount paid to the Costa Rica Social Welfare Fund on those wages and salaries, in accordance with the payroll reported to the Fund. These enterprises may apply for coverage under this Law within five years after the entry into force of the provisions of this paragraph. The entitlement shall be granted for five years, and shall decrease by two percentage points, through to its termination in the last year. This credit shall be charged against the national budget in the manner laid down in the regulations implementing this law.

For the practical implementation of this entitlement, the Executive shall include an annual budget item of 40 million colons (¢ 40,000,000) for the first year of performance; this amount shall be adjusted each year by the percentage increase in the total payroll amounts of the enterprises qualifying for this credit in the previous year.

If the annual amount of this item is exhausted, the applications not met may be granted the entitlement in the following year.

The way in which the credit hereby established is issued and the conditions attaching thereto shall be laid down in the Regulations implementing this Law.

- (1) export processing enterprises operating as beneficiaries of the Duty-Free Zone Regime which on completion of four years of operation under that Regime reinvest in the country may be granted an additional exemption from payment of income tax, according to the following parameters:
  - 1. If the reinvestment is in excess of twenty-five per cent (25 per cent) of the original investment, the exemption shall be for one additional year.
  - 2. If the reinvestment is in excess of fifty per cent (50 per cent) of the original investment , the exemption shall be for two additional years.
  - 3. If the reinvestment is in excess of seventy-five (75 per cent) of the original investment, the exemption shall be for three additional years.
  - 4. If the reinvestment is in excess of one hundred per cent (100 per cent) of the original investment, the exemption shall be for four additional years.

The additional exemptions shall be for seventy-five per cent (75 per cent) of the income tax payable. The additional exemptions granted in this context shall apply as from the end of the eighth year of operations, without prejudice to the exemptions for the final period of four years initially granted, which shall come into effect on the expiry of the additional exemption period referred to here. In the case of enterprises based in "relatively less developed" zones, the additional exemption shall apply on completion of the twelfth year of operations, without prejudice to the exemptions for the final period of six years initially granted, which shall come into effect on the expiry of the additional exemption period referred to here. The reinvestment giving rise to the additional exemption must be made after completion of the fourth year and before the start of the eighth year of operations under the Duty-Free Zone Regime.

The additional exemption may only be granted to enterprises whose original investment in fixed assets was at least two million United States dollars (US\$2,000,000.00).

The enterprises referred to in Article 17(b) shall not qualify for the exemptions specified in paragraphs (f) and (g) of this Article. In cases where an enterprise of the types referred to in other paragraphs of Article 17, other than paragraph (b), carry out marketing activities, the exemption on income tax shall be decreased pro rata according to the level of such activities performed, as laid down in the regulations implementing this Law. The performance of marketing activities by non-trading companies covered by the Regime may only be a supplementary, as opposed to primary, activity, and shall require prior authorization from PROCOMER.

(Modified by Law No. 7830 of 8 October 1998)  
(Amended by Law No. 7467 of 20 December 1995)

#### Article 20 bis

Duty-Free Zone Regime status shall not be granted to natural or legal persons to operate or develop an enterprise or investment project which has already received incentives under the Regime, even if this was under the name of a different natural or legal person, unless it can be demonstrated that the activity is a new project, or, in exceptional cases, where this is justified by the nature of the project and the magnitude of the additional investments involved; all the above shall be at the discretion of the Ministry of Foreign Trade and in accordance with the provisions of the regulations implementing this Law.

(Added by Law No. 7830 of 8 October 1998)

#### Article 21

In addition to the tax incentives specified above, enterprises based in Duty-Free Zones may apply to their respective administration companies or to the Corporation for the following benefits:

- (a) Training assistance, coordinated by the National Training Centre (INA), for employees and would-be employees of enterprises based in duty-free zones. Enterprises located in duty-free zones in "relatively less developed" regions are eligible for the benefits of the national job creation programme of the Ministry of Labour and Social Security, for training and job placements for unemployed and underemployed persons and low-income earners in its region, as laid down in regulations to be drawn up jointly by the Ministry of Foreign Trade and the Ministry of Labour and Social Security.

The Ministry of Labour and Social Security and the enterprise shall sign an agreement, which must be in accordance with the following:

1. The training or retraining shall be for a period of three months, renewable for one further period where justified by the complexity or intensive nature of the process, at the discretion of the Ministry of Labour and Social Security, following submission of a report from the Ministry of Foreign Trade.
2. The training shall be arranged by the beneficiary enterprise, which shall provide the trainee with the plant, machinery and equipment required for his or her training. The courses shall be supervised by the National Training Centre, in accordance with guidelines to be laid down in the relevant agreement.

3. The Ministry of Labour and Social Security shall grant the trainee a monthly allowance, charged to the Programme fund, for the whole of the training period. The amount of the allowance shall be equality to the minimum monthly wage. Since this is a technical training incentive, the payment shall not create any employment relationship or give rise to any other legal consequences.

4. The enterprise shall be obliged to employ the trainee, on completion of the course of instruction or training, subject to the trainee's suitability in accordance with the terms laid down in the relevant agreement.

- (b) assistance with the selection of staff to be employed by the enterprises. Selection activities shall be coordinated with the National Training Centre, the Ministry of Labour and Social Security, trade unions and other local and State institutions;
- (c) assistance and assessment of its requirements and needs for dealings with Government and private-sector institutions;
- (ch) assistance in terms of housing and education for their employees and their family members, on the basis of coordination with the relevant public-sector institutions.

#### Article 22

Enterprises covered by the Duty-Free Zone Regime, except for those referred to in Article 17(b), may bring up to twenty-five per cent (25 per cent) of their total sales into the national Customs territory, subject to compliance with the requirements set down in the regulations implementing this Law. In the case of the enterprises referred to in Article 17(c) the maximum percentage shall be fifty per cent (50 per cent).

The goods and services placed on the national domestic market shall be subject to the taxes and Customs procedures applicable to any similar import from abroad. In addition, the percentage of exemptions from taxes for the import of machinery, equipment and raw materials and taxes on profits shall be reduced by the proportion corresponding to the ratio of the value of the goods and services brought into the national Customs territory to the total value of the sales and services of the enterprise in question, pursuant to the regulations implementing this Law.

(Modified by Law No. 7830 of 8 October 1998)

#### Article 23

Domestic enterprises providing enterprises based in Duty-Free Zones with services, domestic raw materials, and products, parts or components partly or completely manufactured within the country shall be exempt from payment of sales and consumption taxes on the transactions in question.

In addition, their sales to enterprises covered by the Duty-Free Zone Regime shall be regarded as exports, so that, if they are entitled to the Tax Credit Certificate or another form of export incentive, this may be claimed for the relevant sales amount.

#### Article 24

All materials, goods, products, vehicles, equipment and machinery imported into or produced in the Duty-Free Zones in accordance with the provisions of this Law may be sold, exchanged or transferred between enterprises established under the terms of this Regime, with authority from the Corporation. Enterprises established under the Duty-Free Zone Regime as per Article 17(a) may form sub-contracts with entities in the national Customs territory or with other enterprises established under

the Regime for a portion of their production or production process, in strict accordance with the provisions of the regulations on this subject.

In addition, enterprises established under the Duty-Free Zone Regime may bring machinery, vehicles or equipment from Duty-Free Zones into the national Customs territory, provided that this is for the purposes of repairing or modifying the said items.

For this purpose, the Directorate-General of customs shall grant the required permit, subject to lodgement of a Customs lien as a guarantee of the re-entry of the said items into the Duty-Free Zone, or failing that, of payment of the required taxes.

The regulations implementing this Law shall lay down the inspection rules and requirements for the sale of goods and services between enterprises covered by the Duty-Free Zone Regime and enterprises covered by other special import and export regimes.

(Modified by Law No. 7830 of 8 October 1998)

## **Chapter 8. Procedure for Granting of Regime Status**

### Article 25

A natural or legal person interested in obtaining Duty-Free Zone Regime status, under any of the classification categories set out in Article 17 of this Law, must submit the relevant application, duly authenticated by a Notary Public, to the Corporation, accompanied by detailed information on any contamination caused by the process or the waste therefrom, and any documents requested by the Board of Directors of the Corporation, in accordance with any relevant instructions issued by the Corporation.

### Article 26

The Corporation shall analyse the application and the information provided, if complete, and forward an assessment to the Board of Directors, which must decide on the matter by no later than the ordinary meeting following receipt of the assessment, or at an extraordinary meeting, if so agreed by four of the members of the Board.

If the information is not complete, the Corporation shall bring comments it sees fit to the attention of the applicant within eight business days from submission of the application. Once the requirement has been met, the procedure laid down shall then continue in the normal manner.

At its discretion, the Corporation may seek a specialist assessment from the various State institutions, to assist with its analysis of applications received from enterprises.

### Article 27

If the recommendation is accepted, the Executive shall approve the matter by a resolution stating the details laid down in the Regulations implementing this Law.

### Article 28

Once the executive resolution has been published, the beneficiary enterprise shall sign an operating contract with the Corporation; when that condition has been met, the benefits under the Regime shall take effect.

If the beneficiary enterprise has not signed an operating contract within three months of the publication of the executive resolution, the Corporation shall forward a final warning, granting an absolute compliance deadline of five business days. If that deadline expires and the enterprise has still not signed the contract, the granting of duty-free zone status shall lapse.

(Amended by Law 7535 of 10/8/95)

#### Article 29

Where the Board of Directors of the Corporation does not recommend approval of an application by the Executive, an appeal for reconsideration may be lodged within three business days following notification of the applicant or its representative to that effect. The decision on the appeal shall be made within 15 business days of its lodgement.

If the appeal for reconsideration is unsuccessful, administrative avenues of recourse shall be deemed to have been exhausted.

### **Chapter 9. Penalties and Withdrawal of Regime Status**

#### Article 30

If any breaches committed pursuant to Article 32 of this Law constitute criminal offences, the Ministry of Foreign Trade shall forward the relevant information to the Public Prosecutor's office for the initiation and prosecution of the requisite criminal proceedings.

#### Article 31

(Repealed by Law No. 7830 of 8 October 1998)

#### Article 32

The Ministry of Foreign Trade may impose a fine of up to 300 times the basic wage, as defined in Article 2 of Law No. 7337 of 5 May 1993, suspend for a period of between one month and one year one or more of the incentives referred to in Article 20 of this Law, or withdraw Duty-Free Zone Regime status, without liability on the part of the State, for any beneficiary enterprise which has committed any of the following breaches:

- (a) Provision of false information in its application for coverage under the Regime;
- (b) initiating operations outside the period set down in the Executive Resolution;
- (c) failure to comply with the levels of new investment, employment, domestic value added or other obligations laid down in the relevant Executive Resolution;
- (d) failure to submit the annual activity report and any other reports requested by PROCOMER to the Ministry of Foreign Trade within the stated deadlines. Failure to submit the annual report within the deadline set down for this purpose shall incur the automatic suspension of all Regime benefits until such time as the report has been submitted in full;
- (e) making sales on the domestic market without complying with the requirements set down in Article 22 of this Law;
- (f) failing to pay the fee for application of the Regime by the due date;

- (g) failure to lodge the guarantee deposit required under this Law, or to renew it prior to its expiry date;
- (h) ceasing its operations or abandoning its facilities without obtaining prior authorization in the manner set down in the regulations implementing this Law;
- (i) penalties imposed by a final administrative ruling on the enterprise, its shareholders, directors, employees or representatives, in connection with the company's activities, for having committed administrative, Customs, tax or Customs duty offences. In this situation, the imposition of a fine shall be replaced by withdrawal of Regime status in the case of breaches which are of a serious or repeated nature in the assessment of the Ministry of Foreign Trade;
- (j) conviction by final Court judgement of shareholders, directors, employees or representatives of the beneficiary enterprise in connection with the activities of the enterprise for having committed Customs or tax offences. In this situation, the imposition of a fine shall be replaced by withdrawal of Regime status in the cases of breaches which are of a serious or repeated nature in the assessment of the Ministry of Foreign Trade;
- (k) suspension of payments by the enterprise, declaration of enterprise as insolvent, initiation of composition with creditors or compulsory receivership by Court order;
- (l) any other failure to comply with its obligations under law, regulations and operating contracts;
- (m) disposal of waste, by-products and scrap in a manner failing to comply with the provisions of Article 16 of this Law and its implementing regulations;
- (n) use or disposal other than as specified in the relevant Executive Resolution of machinery, equipment, vehicles, raw materials, semi-manufactured products and any other items acquired by the enterprise under the incentives granted;
- (ñ) non-compliance by industrial park development enterprises with the safety and monitoring standards laid down in the regulations implementing this Law.

The determination of the penalty to be imposed shall have regard to the severity of the breach, the level of culpability or presence of fraud on the part of employees or representatives of the enterprise, repeat offending, and, in the case of fines, the total revenue of the enterprise.

The Ministry of Foreign Trade may order the precautionary suspension of the incentives and benefits under this Law for a period of up to six months, during administrative proceedings or judicial investigations regarding the legality of the actions of a beneficiary enterprise under the Duty-Free Zone Regime, related enterprises, or their shareholders, directors, managers or representatives. Neither precautionary suspension nor the lifting of such suspension shall prejudice the final outcome of the relevant administrative proceedings or Court case.

The Ministry of Foreign Trade and the Ministry of Finance shall formulate the coordination mechanisms required for the fair and effective enforcement of supervisory measures and penalties on beneficiary enterprises under the Duty-Free Zone Regime.



The proceeds from the fines specified in this Article shall be distributed as follows: fifty per cent (50 per cent) to PROCOMER and fifty per cent (50 per cent) to the municipality in whose territory the beneficiary enterprise is located.

Following the imposition of the penalties under this Article, the party may lodge an application to have the ruling set aside, within five business days of notification of the ruling, after which all avenues of administrative recourse shall be deemed to have been exhausted.

A ruling imposing a fine shall be a valid basis for enforcement against the offending party, and PROCOMER shall be authorized to collect the amount payable.

(Modified by Law No. 7830 of 8 October 1998)

#### Article 33

On becoming aware of any of the breaches referred to in Article 32, the Executive shall carry out the required investigation and then schedule a hearing of the offending enterprise over three business days, to allow it to present evidence in its defence, to be provided within the next 8 business days. The Minister shall issue the decision within 15 business days of receipt of the evidence.

The ruling withdrawing Regime status shall be served on the offending party, which may submit an appeal for reconsideration to the Ministry within three business days of service of the ruling. The Ministry shall then issue its decision within 8 business days following submission of the appeal. When the appeal ruling has been given, avenues of administrative recourse shall be deemed to have been exhausted, and the Executive Resolution withdrawing the entitlement shall be published.

### **Chapter 10. Final provisions**

#### Article 34

The regulations referred to in this Law shall be promulgated by the relevant authorities within no more than 90 days as from publication of the Law.

#### Article 35

The Corporation shall not be subject to the provisions of Law No. 6821 (Budget Authority Establishment Law) and amendments thereto, of 19 October 1982, Law No. 6955 (Financial Balance Law) and amendments thereto, of 24 February 1984, or Article 29 of Law No. 5255 (National Planning Law) and amendments thereto, of 2 May 1974, and accordingly shall also not be subject to the provisions of any decrees, resolutions, decisions or directives based on those Laws.

#### Article 36

The operation of dry or floating docks within the port enclosure of Caldera under the Duty-Free Zone Regime established under this Law is hereby authorized. The Executive shall initiate the operation of such docks directly, through the Ministry of Public Works and Transport or the Costa Rica Institute of Pacific Ports or under a concession granted to a private-sector enterprise, subject to authorization from the Auditor General of the Republic.

#### Article 37

Industrial park administration companies shall provide a venue for workers to gather and hold meetings, and maintain it in good condition. To assist in the performance of this requirement, workers' representatives shall have free access to the industrial park.

(Added by Law No. 7830 of 8 October 1998)

#### Article 38

The following are hereby repealed: Law No. 6695 (Law on export processing zones and industrial parks), of 10 December 1981, Law No. 6951 (amending Article 18 of the Maritime/Land Zone Law), of 14 February 1984; Law No. 6043 (Maritime/Land Zone Law), of 2 March 1977, Articles 2, 10 and 12 of Law No. 6695 (Law on export processing zones and industrial parks), of 10 December 1981, and Article 10 of Law No. 6999 of 28 August 1985 (extension of validity of a series of transitional provisions for transferring funds from public-sector institutions and enterprises to the Government of the Republic and a temporary change in the allocation of certain tax revenues).

#### Article 39

The Law shall come into force on its publication.

### **Transitional provisions**

#### **TRANSITIONAL CLAUSE I**

The current members of the Board of Directors shall remain in office for six months from the date of publication of this Law. On expiry of that period the new Board of Directors must take office.

#### **TRANSITIONAL CLAUSE II**

The Corporation is hereby authorized to administer the Duty-Free Zones of Moín, in Limón, and Santa Rosa, and Puntarenas, until such time as a concession has been granted for the administration of those zones.

#### **TRANSITIONAL CLAUSE III**

Those enterprises which are covered by the Duty-Free Zone Regime on the publication of this Law may apply to the Corporation, by submitting the relevant documents, for their benefits and incentives to be aligned with the provisions of this Law. To this end, they must comply with the new obligations set down in the Law within a period not exceeding sixty business days from the entry into force of this Law, which must be recorded in each case in the new Executive Resolution.

#### **TRANSITIONAL CLAUSE IV**

The Ministry of Labour and Social Security is hereby authorized to meet obligations contracted with enterprises located in 'relatively less developed areas' prior to the entry into force of this Law on the basis of the National Employment Generation Programme, with the expenditure being charged to that programme.

(Added by Law No. 7467 of 20 December 1994)

Notification to be made to the Executive.

Legislative Assembly, San José, on the twenty-second day of November, nineteen hundred and ninety.

Juan José Trejos Fonseca, President.- Ovidio Pacheco Salazar, First Secretary.- Víctor E. Rojas Hidalgo, Second Secretary.-

Presidency of the Republic. - San José, on the twenty-third day of November, nineteen hundred and ninety.

For execution and publication

R. A. Calderón F.- Minister of Presidency, Rodolfo Méndez Mata, Minister of Finance, Thelmo Vargas Madrigal, Minister of the Economy, Industry and Trade, Gonzalo Fajardo Salas, and Minister of Foreign Trade, Roberto Rojas.

Published in La Gaceta No. 238, Friday 14 December 1990.

**EXECUTIVE BRANCH  
DECREES**

**No. 29606-H-COMEX**

**THE PRESIDENT OF THE REPUBLIC  
AND THE MINISTERS OF FOREIGN TRADE AND FINANCE**

pursuant to Article 140, indents (3) and (18) of the Political Constitution; Article 27, paragraph 1 and Article 28, paragraph 2, indent (b) of the General Public Administration Law, Law No. 6227, of 2 May 1978; Article 2, indents (g), (h) and (i) and Article 8, indent (b) of the Law establishing the Ministry of Foreign Trade and establishing the Costa Rica Foreign Trade Promotion Entity, Law No. 7638 of 30 October 1996, and the Duty-Free Zone Regime Law, Law No. 7210 of 23 November 1990, and amendments thereto.

*whereas:*

1. One of the fundamental objectives of the State is to ensure the socio-economic development of Costa Rica by attracting foreign and domestic investment and promoting exports;
2. the duty-free zone regime is an appropriate instrument for raising the standard of living of Costa Rica Citizens, particularly by generating sources of employment and opportunities for advancement, especially in depressed areas of the country;
3. an essential condition for growth in Costa Rica's foreign trade is the existence of factors favourable to the establishment of enterprises carrying out a wide range of operations which generate wealth and technological expertise and increase the international competitiveness of Costa Rica;
4. it is believed that the impacts of such activities will result in significant socio-economic advances for the population in areas adjacent to duty-free zones;
5. the Duty-Free Zone Regime law and amendments thereto lay down the required conditions for the granting and operation of duty-free zone regime status and the rights and obligations of beneficiaries of that regime;
6. the rules for the granting of duty-free zone regime status and the operation of the regime must seek an appropriate balance between the objective of promoting investment and exports by means of this regime on the one hand, and the necessary supervision to ensure the correct use of regime benefits on the other, within the limits and in accordance with the conditions laid down in the Duty-Free Zone Regime Law and other applicable laws,

**now therefore,**

DECREE

the following

**Regulations implementing the Duty-Free Zone Regime Law**

CHAPTER I

**General provisions**

Article 1. These Regulations lay down the rules and procedures relating to the granting of duty-free zone regime status and the operations regime beneficiaries may carry out, in accordance with the Duty-Free Zone Regime Law, Law No. 7210 of 23 November 1990 and amendments thereto.

Article 2. In the application and interpretation of these Regulations, a balance shall be sought between the flexibility and efficiency of the operation of the duty-free zone regime on the one hand, and adequate monitoring and supervision of the correct use of the tax benefits granted on the other.

Article 3. For the purposes of these Regulations, the following definitions apply:

"Executive Resolution": the resolution of the Executive granting duty-free zone regime status to a natural or legal person, signed by the President of the Republic and the Minister of Foreign Trade;

"Administrator": the enterprise administering a duty-free zone;

"Competent Customs office": the Customs office responsible on the basis of geographical location and territorial purview for the Customs supervision of the place where the principal facilities of the regime beneficiary are based, and which exercises Customs control over the Customs operations in which it is involved;

"Beneficiary": the natural or legal person covered by the duty-free zone regime;

"Credit": the credit granted to natural or legal persons covered by the duty-free zone regime and located in relatively less developed areas pursuant to Article 20(k) of Law 7210 and amendments thereto.

"Comex": the Ministry of Foreign Trade;

"Operating Contract": the contract to be signed by duty-free zone regime beneficiaries with Procomer, setting out their rights and obligations under the regime on the basis of the executive resolution granting regime status.

"Duty-Free Zone Customs Declaration": notarially recorded document recording all entry and exit movements of materials and merchandise into and out of duty-free zones.

"Scrap": goods left over from the production process.

"General Management": the general management of Procomer.

"IMAS": the Joint Social Assistance Institute.

"Board of Directors": the Board of Directors of Procomer.

"General Customs Law": the General Customs Law, Law No. 7557 of 8 November 1995.

"Law No. 7210 and amendments thereto": the Duty-Free Zone Regime Law, Law No. 7210 of 23 November 1990 and amendments thereto.

"Materials and merchandise": this refers to materials and merchandise which would qualify for inclusion in the Duty-Free Zone Regime, and for the purposes of these Regulations, the following:

- (a) Raw materials, initial forms, including mixtures (prepared or semi-manufactured, for example), associated materials (mechanical, electrical, measurement, monitoring, verification or testing apparatus, for example),
- (b) merchandise to be used for administrative activities (desks, computers, office supplies, for example) specifically for the operating or production area of the beneficiary,
- (c) merchandise necessary for food preparation, furniture and utensils required for serving food, appliances, furniture and fittings for training and for medical care and rehabilitation, solely for use by employees directly associated with the operating, production, administration and transport processes of the enterprises,
- (d) manufactured merchandise or processed products required, and commercial, industrial or scientific samples.

In all cases, the merchandise in question must be directly related to the activity covered by the incentives.

"Machinery and equipment": assets used for the processing or transformation of other products and services,

"Scrap": the proportion by which inputs are diminished with respect to the initial quantity after undergoing or being used in a production process;

"Operations": activities conducted by enterprises covered by the duty-free zone regime, including activities generating employment, infrastructure construction activities, industrial shipbuilding activities and other activities related to production activities,

"Regime Administration Entity": the entity administering the duty-free zone regime, i.e. Promotora del Comercio Exterior de Costa Rica;

"Duty-Free Zone Industrial Park": any park administered by an enterprise with Duty-Free Zone Regime status in this category;

"Satellite plants": plants established outside the park where the principal plant is located, pursuant to the provisions of Article 18 indent (ch) of Law 7210 and amendments thereto;

"Procomer": Promotora del Comercio Exterior de Costa Rica (Costa Rica Foreign Trade Promotion entity);

"Regime": the duty-free zone regime, which is the set of incentives and benefits offered by the State to parties meeting the requirements and obligations laid down in Law 7210 and amendments thereto, these Regulations and other applicable rules;

"By-products": products obtained as accessory outcomes of the principal production process;

"Duty-Free Zone": an area without a resident population which has been authorized by the Executive as a base for the establishment of enterprises operating under the duty-free zone regime.

## CHAPTER II

### **Investment requirements**

Article 4. Duty-free zone regime status shall be granted solely to enterprises making new investments in Costa Rica in accordance with the following parameters, as set down in Law No. 7210 and amendments thereto:

- (a) Initial new investment in fixed assets of at least one hundred and fifty thousand US dollars (US\$150,000) or the equivalent in local currency, for enterprises based within a duty-free zone industrial park;
- (b) initial new investment in fixed assets of at least two million US dollars (US\$2,000,000) or the equivalent in local currency, for enterprises based outside a duty-free zone industrial park.

For the purposes of the preceding paragraph, where the assets have been purchased in local currency the amount of the initial investment shall be determined according to the sell exchange rate for the dollar on the day of the purchase of the asset in question.

Article 5. To qualify as new investments, investments in fixed assets must meet the following requirements:

- (a) The assets must be owned by the duty-free zone regime applicant, and must be acquired by the applicant as from the date of lodgement of application for duty-free zone regime status;
- (b) in the case of movable fixed assets, these must be new or used assets in provenance from outside the country, or new assets acquired in Costa Rica.

Article 6. "Initial investment" means investment carried out within the period laid down in the relevant executive resolution granting regime status, to be set according to the nature and characteristics of each project; this period shall never exceed two years from the date of publication of the executive resolution.

The minimum initial new investment in fixed assets requirement shall be independent of the total investment obligation undertaken by the beneficiary enterprise, as set down in the executive resolution granting regime status, but the minimum initial new investment amount shall be regarded as part of the total investment amount which the enterprise commits to.

Article 7. "Fixed assets" refers to immovable assets, and movable assets subject to depreciation, which are used in the operation of the business, for which the date and cost of acquisition are duly recorded in the accounting records of the duty-free zone regime applicant. For the purposes of determining the initial new investment amount, fixed assets shall be valued at historical

cost (acquisition cost), without prejudice to the application for accounting purposes of the standards and rules for tax purposes.

For the assessment of the amounts of the investments, to be carried out on the basis of the Annual Operating Report, Procomer shall use the exchange rate as of the date regime status was granted, according to the Executive Resolution. If the investment amount has been modified, the exchange rate applied shall be that for the date of the modification, according to the relevant Executive Resolution.

Article 8. Small export processing enterprises, which are understood as enterprises employing no more than twenty staff, may form consortia, pursuant to Article 1 par. 3 of Law No. 7210 and amendments thereto, to meet the required amount for initial new investments in fixed assets. In other respects these cases shall be subject to the rules set down in this Chapter.

The possibility referred to in this Article relates solely to enterprises intending to set up within the same duty-free zone industrial park.

### CHAPTER III

#### **Required conditions and the assessment and processing of applications for duty-free zone regime status**

Article 9. Enterprises wishing to obtain duty-free zone regime status must submit an application to Procomer, on the official form to be drawn up by Procomer and made available to potential applicants. The application must contain the following:

- (a) Details of the applicant;
- (b) certificate of entry in Company Register and legal status, in the case of legal persons;
- (c) detailed description of the proposed activities to be carried out under the regime and list of the products and by-products which will be produced, a list of the raw materials and merchandise which will be used in the production process, and projections of the scrap and waste which will be generated;
- (d) detailed description of the location and characteristics of the project;
- (e) information on the enterprise's references and past experience, where applicable, from activities equivalent or similar to the proposed activities to be carried out under the regime;
- (f) detailed information on the contamination and waste which will be produced by the production process, or copy of the form presented to the relevant entity of the Ministry of the Environment and Energy regarding the environmental impact study, where applicable pursuant to the relevant Laws and regulations;
- (g) details of the amount of initial new investment in fixed assets, along with the total investment planned and number of employment positions;
- (h) projection of the Domestic Value Added the enterprise undertakes to maintain. This calculation shall be based on the formula laid down for this purpose in these Regulations;



- (i) affidavit declaring that the party is not a beneficiary of another incentives regime;
- (j) service address in the city of San José;
- (k) any other document or information requested by Procomer as relevant for the application.

The signature of the applicant must be authenticated.

Article 10. The form and the required documents must enable Procomer to check the following aspects:

- (a) Affidavit declaring that the applicant and its partners or directors are currently up to date with their tax obligations in Costa Rica;
- (b) that the applicant enterprise and the activities planned by the enterprise under the duty-free zone regime fall within one of the categories set down in Article 17 of Law No. 7210 or amendments thereto;
- (c) that the project details are not manifestly inconsistent with scientific, logical and technological principles;
- (d) that the project complies with the minimum initial investment requirement set down in Law No. 7210 and amendments thereto, and in Chapter II of these Regulations;
- (e) affidavit declaring that the applicant enterprise or the project are not in any of the situations described as breaches pursuant to Article 32 of Law No. 7210 and amendments thereto, within the limits of reasonable applicability;
- (f) that the applicant enterprise or the project have not previously benefited from the regime incentives, or if they have so benefited, that sufficient evidence is presented to show that the application relates to a new project, or sufficient evidence of its nature and the magnitude of additional investment involved, in accordance with Article 20 bis of Law No. 7210 and amendments thereto;
- (g) the enterprise's percentage of Domestic Value Added.

Article 11. For the calculation of Domestic Value Added (DVA) or Domestic Content applicable for the granting of Duty-Free Zone Regime status, Procomer shall interpret the concept of DVA as follows: FOB Exports (X FOB) less CIF Imports (M CIF), plus Change in Inventory (Inv), less remittances, less Net Tax (T).

$$DVA = X \text{ FOB} - M \text{ CIF} + \Delta \text{ Inv} - R - T$$

- (a) Where: CIF imports (M CIF) are imports relating to raw materials; Change in Inventory (Inv) is the result of final inventory minus initial inventory, as a monetary amount; remittances ( R ) refers to the amount of funds sent abroad in foreign currency or capital repatriation; and net tax (T) is the amount of all types of tax paid to the State.

In the case of services, administration and trading companies, the term "exports" shall be understood as total sales.

For services and administration companies, inventory shall be taken as equal to zero (0).

Article 12. In the case of small enterprises intending to form consortia to carry out export processing activities, the enterprises forming the consortium must constitute a single legal person, or contractually designate one of the enterprises as the applicant. In the latter case, the application must be accompanied by a copy of the relevant consortium deed, clearly setting out the obligations and responsibilities of each of the member enterprises. Furthermore, the enterprises forming the consortium must in all cases be based in the same industrial park.

In cases where one enterprise is designated as the applicant, all the consortium enterprises shall be regarded as regime beneficiaries for the purposes of compliance with the obligations and application of the penalties referred to in Law No. 7210 and amendments thereto, and in other relevant laws and regulations.

Article 13. Within five business days from submission of the application, the Administration of Procomer must notify the applicant of any document omitted, or of any requirement which has not been met, granting a period of ten business days for complying with the requirements set out in the notification.

Within no more than 10 business days of being in possession of all the information required, the technical unit of Procomer must forward an opinion to the Board of Directors or the entity to which the Board of Directors has delegated this role; the opinion must include an assessment of the aspects set out in these Regulations and a recommendation on whether or not duty-free zone regime status should be granted to the applicant enterprise, with supporting arguments.

The Board of Directors, the entity to which the Board of Directors has delegated this role, or the administration of Procomer may seek the opinion of other public-sector entities or bodies where it considers this will assist in the assessment of the project.

Following the analysis of the application, the Board of Directors or the relevant entity of Procomer shall submit the final recommendation to the Minister of Foreign Trade, for the decision on the matter by the Executive.

Article 14. If the Executive decides to grant duty-free zone regime status to the applicant enterprise, an Executive Resolution shall be issued accordingly; the resolution must contain at least the following details:

- (a) Register entry details and representation information on the beneficiary enterprise;
- (b) specification of the classification category of the enterprise within the categories set down in Article 17 of Law No. 7210 and amendments thereto. Regime status may not be granted to the same applicant in more than one category;
- (c) description of the principal characteristics of the project and the activities to be carried out by the enterprise under the duty-free zone regime;
- (d) legally required minimum amount of initial new investment in fixed assets, and the time-limit for attaining that figure;

- (e) parameters which the beneficiary enterprise undertakes to meet, in terms of total investment amount and the number of employment positions, and the time-limits within which the enterprise undertakes to meet these commitments;
- (f) express reference to the obligations of the beneficiary enterprise to meet all the requirements under Law No. 7210 and amendments thereto, and with its obligations as an auxiliary Customs agent;
- (g) express reference to the obligation of the enterprise to accept implementation of mechanisms allowing satisfactory monitoring and supervision of its operations under the duty-free zone regime, as set down by Procomer and the Ministry of Finance;
- (h) express reference to the obligation of the enterprise to comply with all environmental protection requirements laid down in Costa Rica legislation and international law for the performance of economic activities in a sustainable manner, to be verified by the competent authorities.

Article 15. If the Executive decides not to grant duty-free zone regime status to the applicant enterprise, it shall issue a resolution accordingly, notification of which shall be made by Procomer to the applicant.

Article 16. Executive resolutions denying or granting duty-free zone regime status to applicant enterprises are subject to appeal for reconsideration pursuant to the Administrative Disputes Jurisdiction Law.

Article 17. As from the submission of the initial appeal, and after the issuing of the final resolutions by the Executive, Procomer must keep the papers relating to duty-free zone regime applications, correctly numbered in sequence.

Article 18. The benefits granted by Law No. 7210 and amendments thereto to beneficiary enterprises under the duty-free zone regime take effect as from the date on which the executive resolution granting regime status is forwarded to the applicant, but without prejudice to the terms and conditions set down in each executive resolution in accordance with Article 20, indent (g) par. 2 of Law No. 7210 and amendments thereto. Notwithstanding the preceding, the performance of the activities under the regime and actual enjoyment of the benefits may not commence until such time as the beneficiary enterprise has signed an operating contract with Procomer, in the format set down for this purpose.

In order to commence production operations under the regime, the enterprise must have been authorized by the Directorate-General of Customs to act as an auxiliary Customs agent, in accordance with the General Customs Law and its implementing regulations.

The executive resolution granting regime status shall be published in full in the official gazette, at the expense of the applicant enterprise.

## CHAPTER IV

### **Applications for industrial park administration enterprises**

Article 19. In the case of enterprises applying for duty-free zone regime status to develop and administer a duty-free zone industrial park, the provisions of Chapter III of these Regulations shall apply. However, Procomer must also request information in confirmation of sufficient financial

capacity for the development of the project and the presence of adequate infrastructure facilities, availability of services and adequate supervisory mechanisms, having regard to the obligations of park administration enterprises pursuant to Law No. 7210 and amendments thereto. In addition, the enterprise must submit a master plan document for the proposed development of the park, including the project stages and timeframes.

In addition, the applicant enterprise must submit the draft text of general operating rules for the park, laying down rules and procedures for the monitoring of goods and persons entering and leaving the zone, in a manner satisfactory to Procomer and the Directorate-General of Customs, pursuant to the General Customs Law and its implementing Regulations.

Article 20. The minimum infrastructure facilities allowing the registration of an industrial park as a duty-free zone shall be infrastructure facilities with capacity for the installation of at least 12 enterprises operating under the duty-free zone regime, whether solely as export processing enterprises or in conjunction with enterprises in other categories listed under Article 17 of Law No. 7210 and amendments thereto, subject to verification to the satisfaction of Procomer.

In the situations referred to in Article 12 of these Regulations, for the purposes of the preceding paragraph the consortium enterprises shall be regarded as a single enterprise.

Article 21. On the installation of any enterprises which are not covered by the duty-free zone regime, enterprises administering parks designed for occupation by enterprises operating under that regime shall forfeit the exemption from all taxes on profits and any other taxes for which the tax base is determined according to gross or net earnings, dividends paid to shareholders or sales revenues. A proportional decrease shall also be applied to other exemptions, as per the procedure for sales within the national territorial pursuant to Article 22 of the Duty-Free Zone Regime Law and amendments thereto. If the above situation arises, the park administrator must notify the competent Directorates of the Ministry of Finance to this effect within eight calendar days of the execution of the contract for the sale or lease of the premises, to enable each Directorate to act in accordance with its powers and areas of competence.

Article 22. The minimum infrastructure facilities for authorization as a free zone in the case of a park designed solely for service provider and/or trading enterprises shall be the provision of an available area for construction of at least 4,000 square metres intended for occupation by enterprises covered by the duty-free zone regime, subject to verification to the satisfaction of Procomer.

## CHAPTER V

### **Applications relating to enterprises based outside the park**

Article 23. In the case of applications from enterprises wishing to set up outside a duty-free zone park, the provisions of Chapter III of these Regulations shall apply, but Procomer shall also be required to establish the following aspects in particular:

- (a) That the application relates to an export processing enterprise;
- (b) that the characteristics of the production process or the nature of the project prevent its being carried out within an industrial park;
- (c) that the enterprise is able to comply with supervision mechanisms for monitoring the entry and exit of goods and persons, in accordance with the General Customs Law, its

implementing Regulations, and operational policy instructions in this regard issued by the Directorate-General of Customs;

- (d) that the enterprise complies with the electronic data transmission formats and procedures as laid down by the Directorate-General of Customs, as required for the integration of Customs operations; compliance with this requirement shall be demonstrated in the form of a certificate from the Information Technology Directorate of the said Directorate;
- (e) that the enterprise complies with the obligation laid down in Article 14 and other relevant provisions of Law No. 7210 and amendments thereto.

Article 24. Enterprises intending to set up outside an industrial park must comply with the minimum initial investment amount in fixed assets required under Law No. 7210 and amendments thereto, in accordance with the criteria set down in Chapter II of these Regulations.

Article 25. In the case of applications from enterprises intending to set up outside an industrial park, on receipt of the final recommendation from Procomer, or beforehand if this is seen as appropriate, the Minister of Foreign Trade must carry out the mandatory requirement for consultation with the Ministry of Finance pursuant to Article 18(ch) of Law No. 7210 and amendments thereto.

The opinion issued by the Ministry of Finance shall refer to the feasibility of carrying out the relevant tax and Customs supervision procedures, and any other aspect the Ministry of Finance sees fit to raise.

## CHAPTER VI

### **Applications relating to satellite plants and additional warehouses**

Article 26. In the case of applications from duty-free zone regime beneficiary enterprises to set up satellite plants outside the duty-free zone industrial park in which its principal plant has been authorized, the relevant provisions of Chapter III of these Regulations shall apply, but Procomer shall also be required to establish the following aspects in particular:

- (a) That there are considerations of availability of manpower, transport, raw material handling capacity or other similar relevant considerations, such as to justify authorization of a satellite plant;
- (b) that the enterprise undertakes to carry out a significant proportion of its production at the plant based in the park. In this context, a "significant proportion" is understood as a requirement that at least 60 per cent of the total production of the enterprise under the regime is to be generated directly by the principal plant. It shall be the responsibility of Promotora del Comercio Exterior [foreign trade promotion entity] to ensure that the production of the satellite plants does not exceed 40 per cent of the total production of the enterprise, in accordance with internal procedures to be formulated by it to that end;
- (c) that the enterprise undertakes, and is able, to set up the relevant tax and Customs monitoring arrangements for the satellite plant or plants, in a manner satisfactory to the Directorate-General of Customs.

Article 27. Procomer, acting in coordination with the competent Customs office for the location of the principal plant, shall give authority, on an exceptional basis and solely where this is justified on the basis of sound supporting arguments, for goods movements (imports and exports) to be carried out directly from the satellite plants. Notwithstanding such arrangements, the competent Customs office for the principal plant shall be responsible for Customs monitoring, and it shall keep the records and undertake the inspections for the transactions carried out by the satellite plant. In this situation, the beneficiary enterprise must comply with any additional monitoring mechanisms set down in the General Customs Law and its implementing Regulations. If the opinion of the competent Customs office has been sought but the opinion has not been provided within 48 hours, it shall be assumed that it has no objection to the granting of authorization.

Article 28. In exceptional cases Procomer shall authorize the use of warehouses for the storage of materials and merchandise. For authorization to use a warehouse, the regime beneficiary must apply for a permit from Procomer. Once this is granted, it must apply for an operating authorization from the Directorate-General of Customs, producing the permit granted by Procomer.

Warehouses shall be authorized only within an industrial park or duty-free zone where there is not sufficient space in the principal plant. If the warehouse is located in a different competence district from that of the principal plant, Customs monitoring shall be carried out by the Customs office for the location of the said principal plant. Imports and exports may not be carried out from such warehouses. For goods movements between the principal plant and the warehouses, the Duty-Free Zone Customs Declaration shall be used.

## CHAPTER VII

### **Applications for modifications to executive resolutions and for relinquishment of duty-free zone regime status**

Article 29. Any change in the conditions or activities of a beneficiary enterprise under the duty-free zone regime requiring a modification to the terms and conditions of the executive resolution granting regime status shall be subject to prior authorization from the Executive. To this end, the enterprise in question shall submit an application to this effect to Procomer, accompanied by the information and documentation on which the application is based. Procomer shall process such applications according to the procedures set down in Chapter III of these Regulations, as applicable.

Article 30. Where a beneficiary enterprise wishes to relinquish duty-free zone regime status, it must notify Procomer and the Directorate-General of Customs accordingly, with at least one month's advance notice. Procomer shall ensure that the following requirements have been met:

- (a) That the enterprise is up-to-date with payment of fees for the use of the regime and other obligations set down in Law No. 7210 and amendments thereto, and in these Regulations;
- (b) that the enterprise is up-to-date with its tax obligations, on the basis of a sworn declaration issued by its Legal Representative;
- (c) that the enterprise is up-to-date with payment of its employer's dues, on the basis of a certificate issued by the Costa Rica Social Security Fund;
- (d) that the enterprise announces its intention to relinquish regime status by a notice published in a national daily newspaper;

- (e) that the enterprise submits a copy of the notification concerning its intention to withdraw from the regime, duly stamped and receipted by the competent Customs office for the enterprise.

Article 31. Procomer must request and obtain from the management company a certificate, issued by an Authorized Public Accountant who has had access to the operating records of the enterprise and the relevant Customs declarations, stating that the raw materials and goods purchased by the beneficiary under the regime have been duly used or disposed of, and that all the relevant Customs transactions have been completed. This is without prejudice to any verifications the Directorate-General of Customs or the competent Customs office may decide to carry out, on the basis of their legal powers.

Article 32. On completion of the above verification processes, Procomer shall forward a report to the Minister of Foreign Trade, for the Executive to adopt a resolution as applicable on the relinquishment request submitted.

As from acceptance of the relinquishment application from the party concerned by the Board of Directors or competent entity of Procomer, the enterprise in question shall be suspended from all regime benefits, and notification shall be sent on the same day to the competent Customs office and the Directorate-General of Customs for the required action in each case. The only transactions permitted shall be those required for payment of tax on goods purchased under the regime, the re-export of such goods or their sale to special regimes, to be carried out within 15 days of notification of acceptance of the relinquishment request, in accordance with Article 56(f) of the General Customs Law.

The deed of acceptance of relinquishment issued by the Board of Directors or the competent relevant entity of Procomer shall order cancellation of charges for the fees for the use of the regime.

When the party concerned has submitted the items specified in Article 31 to Procomer, the guarantee deposit shall be returned to the party, less any outstanding amounts payable to Procomer.

## CHAPTER VIII

### **Rights and obligations of beneficiaries of the duty-free zone regime**

Article 33. Enterprises covered by the duty-free zone regime shall be entitled to invoke the tax exemptions and benefits set down in Law No. 7210 and amendments thereto, provided that they remain up-to-date at all times with compliance with the requirements and conditions laid down in the said Law, these Regulations, and any instructions issued by Procomer or the Ministry of Finance, as applicable.

Article 34. The following obligations apply to beneficiaries of the duty-free zone regime:

- (a) To comply with requirements specified by Procomer and the tax and Customs authorities in the performance of their monitoring functions;
- (b) to set up accounting and operating systems allowing checks to be carried out at any time on the entry, presence and exit of goods.

It must be possible to extract at any time at least the following information from its accounting systems or ongoing merchandise inventory records:

- Legal ID number of the supplier and its trading name;
  - sequential purchase order No. or equivalent document issued by the duty-free zone enterprise and the date;
  - invoice number of local supplier and its date;
  - date of actual entry of the goods;
  - entry quantity;
  - unit of measurement;
  - sequential number of production or withdrawal of goods from stock;
  - quantity withdrawn;
  - unit of measurement;
  - balance;
- (c) to cooperate to the best of its ability with Procomer and the tax and Customs authorities, in the performance of their monitoring functions;
- (d) to maintain a continually updated inventory record of all inward-cleared goods;
- (e) to submit an annual operating report to Procomer, in the manner laid down in these Regulations, and any other reports requested by Procomer, Comex or the tax and Customs authorities in the performance of their functions. The annual report submitted to Procomer must be audited by an authorized public accountant. Procomer shall provide a copy of the report to the Directorate-General of Customs, for action as applicable;
- (f) to lodge and maintain continually at the required level a guarantee deposit in favour of Procomer;
- (g) to pay punctually the fees for use of the regime;
- (h) to comply with the relevant environmental, town planning, public health and other regulations, according to the type of activity conducted by the enterprise, and to hold all required operating permits at all times;
- (i) to comply at all times with the minimum requirements for level of initial investment, projected investment, employment positions and other requirements laid down in the relevant executive resolution;
- (j) to provide Procomer with all information requested by it in connection with the administration of the regime, in a timely manner;



- (k) to arrange 100 per cent electronic transmission of the Customs Declarations for the various duty-free zone transactions, with the exceptions laid down in these Regulations;
- (l) to maintain orderly files of the Duty-Free Zone Customs Declarations and attachment documents, in accordance with Article 30(b) of the General Customs Law;
- (m) to meet other obligations as laid down in Law No. 7210 and amendments thereto, these Regulations, other relevant Laws and regulations, and the executive resolution granting regime status and the operating contract.

Article 35. In addition, the following obligations shall apply to industrial park administration enterprises:

- (a) To notify the competent Customs office and Procomer of the occurrence of any change of premises, leasing of new warehouses or any non-routine movement of enterprises based in the park;
- (b) in the event of suspension of benefits enjoyed by beneficiary enterprises based in the industrial park, it must prevent the exit of any merchandise without prior authorization from the competent Customs office;
- (c) to enforce circulars issued by the Directorate-General of Customs in terms of their responsibility as auxiliary Customs agents;
- (d) before cessation of operations by an enterprise based in the park, to ensure immediate notification of the Customs station, the Directorate-General of Customs, and Procomer;
- (e) to equip the Customs station with the telephone lines required for its satisfactory operation;
- (f) to equip the Customs station with the furniture, fixtures and services required for its satisfactory operation;
- (g) to provide a security force for the park, to ensure the safety of goods and persons within the park, and to monitor compliance with requirements regarding the entry, presence and exit of persons, vehicles and goods, and to monitor the operation of the park in accordance with requirements;
- (h) to issue rules in accordance with the provisions of Article 19 of these Regulations, and to notify users of these and display the text of the rules in a prominent location within the park; in addition, to carry out training activities targeted at the beneficiary enterprises based in the park and the surveillance personnel;
- (i) to maintain the park access and the roads within the park in good condition;
- (j) to perform the project strictly in accordance with the executive resolution;
- (k) to provide services in an efficient manner to the beneficiaries based in the park;
- (l) to supervise correct application of the Laws and regulations relating to the administration and operation of the park;

- (m) to comply with the provisions of other relevant Laws and regulations, and with any instructions issued by Procomer and the Directorate-General of Customs in their areas of competence.

Article 36. The relevant entities in the Ministry of Finance shall lay down the monitoring procedures to be followed by park administration enterprises, enterprises located outside parks and satellite plants as regards the entry and exit of goods, contracting arrangements and other applicable rules, in accordance with Article 19(f) of Law No. 7210 and amendments thereto.

Article 37. As part of the deed of notification of the executive resolution granting regime status, beneficiaries must lodge a guarantee deposit in favour of Procomer for an amount equal to three months of the fees payable for the use of the regime, subject in all cases to a minimum of five thousand US dollars. If the amount of lease rental paid by the enterprise is increased to an amount higher than the amount of the guarantee deposit, the latter must be adjusted. This guarantee shall provide unconditional endorsement of correct performance of each and every one of the obligations incumbent on the beneficiaries. The guarantee may be returned in any of the ways set down in the Regulations implementing the Administrative Contracts Law.

Procomer shall be entitled to enforce the said guarantee by an administrative procedure, without any formalities other than adoption of a decision with statement of grounds, and without any liability on its part, and to deduct from the sum in question any amounts owed to it by beneficiaries in any context. The operating contract must include a clause expressly providing for this possibility.

It shall be understood that the guarantee referred to in this Article is to remain in force as an unconditional undertaking for the whole of the period for which the beneficiary remains covered under the regime; if the beneficiary fails to lodge or replace the guarantee for any reason in the required manner within the specified deadline, or within the compliance deadline allocated by Procomer where applicable, Procomer shall immediately notify Comex, for initiation of the administrative procedure for revocation of regime status. After the expiry of the said deadline, under no circumstances will any new deadline be granted for compliance with this obligation.

Article 38. Regime beneficiaries must commence their activities by no later than the date stated in the relevant executive resolution. The Executive may grant extensions to the deadline for commencement of activities, following a request from the enterprise to this effect and a recommendation from Procomer, with supporting arguments in each case, provided that the date of commencement of production operations is no later than two years from the publication of the executive resolution.

In setting the activity commencement date and extensions of the commencement deadline, consideration shall be given to the details provided by the applicant in its application, the nature of the activity to be carried out, and the time required to generate an income from the activity; accordingly the characteristics of each specific project shall be taken into account.

Article 39. Within the four months following the end of the normal financial year, or a non-standard financial year as authorized by the Ministry of Finance for a specific enterprise, beneficiaries must provide Procomer with an annual report on their activities during the financial year which has just finished, containing and providing the information specified in the form drawn up for this purpose by Procomer.

If the report is submitted in an incomplete form, Procomer shall give the beneficiary a deadline of 15 business days, reckoned from the date of notification to this effect, to remedy the defects or submit the documents not provided. In the case of substantive defects and omissions,

however, such that the content of the report cannot be assessed, the report shall be regarded as not submitted.

If the report is not submitted within the deadline set down in the first paragraph of this Article, or if it is found that the report has been submitted with substantive defects and omissions, or if the omissions have not been remedied within the deadline specified in the second paragraph of this Article, Procomer shall temporarily suspend the enterprise in breach from performance of any actions or entitlements regarding activities covered by the regime, and make notification accordingly, on the same day the relevant official letter is sent, to the Directorate-General of Customs, the competent Customs office, the Directorate-General of Finance and the administration of the industrial park where the enterprise is located, to ensure the concomitant suspension of all regime transactions and benefits, such as the transit or movement of materials and merchandise, exemptions and other operations within the regime. All of the above shall be without prejudice to any fines or the possible revocation of the regime which may become applicable in accordance with the law, and the basis of a recommendation, with supporting arguments, forward by Procomer to Comex.

Article 40. In cases where a beneficiary is in arrears with payment of its mandatory legal contributions for use of the regime by 15 calendar days, Procomer shall bring this to its attention. If the default period is in excess of 30 calendar days, Procomer shall advise Comex, for initiation of the administrative procedure for imposition of the relevant penalties and precautionary suspension of all benefits; on the same day that it receives the resolution initiating the procedure, duly signed by the President of the Republic, Comex must notify the Directorate-General of Customs and the competent Customs office to this effect. As from a default period in excess of 30 days, the enterprise in question shall automatically be suspended from all benefits or transactions with Procomer, until such time as it is again up to date with payment of the said contribution.

## CHAPTER IX

### **Special provisions on incentives**

Article 41. The Executive shall not grant duty-free zone regime status for the development or operation of enterprises or investment projects which have already received incentives under the Regime, even if this was under the name of a different natural or legal person, unless it can be demonstrated that the activity is a new project, or, in exceptional cases, where this is justified by the nature of the project or the magnitude of the additional investments involved, in the assessment of the Ministry of Foreign Trade.

In assessing the criteria set down in this Article, the Ministry may consider all criteria allowing it to establish whether the enterprises or projects seeking admission to the regime have previously received regime incentives, or to establish whether the proposal involves new or exceptional projects which may be admitted on the basis of their nature, or the magnitude of the investments involved.

In assessing whether the venture is a new project, consideration shall be given to the location, the production process, the goods or services produced, and other similar criteria. In addition, for both additional investments and new projects, the party must at least meet the minimum initial new investment requirements laid down in Chapter II of these Regulations.

Article 42. Export processing enterprises covered by the duty-free zone regime whose initial new investment in fixed assets has been greater than or equal to two million US dollars (US\$2,000,000.00) or the equivalent in local currency, and which, on completion of four years since gaining regime status, reinvest in the country shall be entitled to an additional exemption from payment of income tax, under the terms and conditions laid down in Article 20(1) of Law No. 7210 and amendments thereto.

For the purposes of determining and quantifying the minimum initial investments, reinvestment and the additional exemption, the following rules shall be applied:

- (a) Eligibility for this additional exemption is restricted to enterprises which have made an initial new investment in fixed assets under the regime of at least two million US dollars (US\$2,000,000.00). The assessment of the amount of this initial new investment in fixed assets shall be based on the same parameters as laid down in Articles 5 and 7 of these Regulations. In addition, the initial investment in this context shall also be deemed to include investments made during the first two years of application of the regime, i.e. the two years following date on which the resolution granting regime status was sent to the enterprise in question;
- (b) the enterprise must have made the reinvestment after the expiry of four years from being granted regime status, and before the start of the eighth year after being granted regime status. For this purpose, years shall be reckoned as annual periods from the date on which the executive resolution granting regime status was sent to the enterprise;
- (c) the reinvestments must meet the requirements for new investments in fixed assets, in accordance with the parameters laid down in Articles 5 and 7 of these Regulations;
- (d) the reinvestment percentage required under Article 20(l) of Law No. 7210 and amendments thereto in order to qualify for each additional year of exemption from 75 per cent of tax on profits for up to a maximum of four years, shall be calculated on the basis of the total fixed asset investment amount of the enterprise as of the day of the expiry of four years from the granting of regime status, or on the amount of two million US dollars (US\$2,000,000.00) laid down in [Article 20](l) of Law No. 7210 and amendments thereto, whichever is the larger;
- (e) each year of exemption from 75 per cent of tax on profits, for up to a maximum of four years, shall be reckoned from the end of the last year in which the enterprise was entitled to exemption from 100 per cent of tax on profits. For this purpose, years shall be reckoned as annual periods from the date on which the enterprise first became entitled to the exemption from 100 per cent of tax on profits;
- (f) on expiry of the year or years of additional exemption from 75 per cent of tax on profits for the enterprise, within the maximum of four years in accordance with Law No. 7210 and amendments thereto, the enterprise shall be entitled to continue with the exemption from 50 per cent of tax on profits, up to the expiry of the period for that exemption in accordance with Law No. 7210 and amendments thereto;
- (g) to qualify for the additional exemption of 75 per cent of tax on profits laid down in Article 20(l) of Law No. 7210 and amendments thereto and the implementing provisions contained in this article, the enterprise must make an application in writing to Procomer within three calendar months from the date by which it was required to make its additional reinvestments, i.e. the date of expiry of seven years since the dispatch of the executive resolution granting regime status. The application must be submitted on the form to be drawn up for this purpose by Procomer, and must be accompanied by the documentation specified on the form, the purpose of which is to verify the amount, characteristics and dates of both the initial investment and the additional reinvestments, in order to determine whether the requirements and conditions laid down in Law No. 7210 and amendments thereto and in these

Regulations have been met. If the application is not submitted by the due date, the application shall be rejected;

- (h) Procomer shall analyse the application submitted and forward a report to Comex, following the procedure set down in Chapter III of these Regulations as applicable. If the Executive grants the additional exemption referred to in this Article, this shall be recorded as a modification to the executive resolution granting regime status. Executive resolutions rejecting an application for an additional exemption in accordance with this Article are subject to appeal for reconsideration pursuant to the Administrative Disputes Jurisdiction Law.

Article 43. Enterprises engaged in trading activities which operate under the regime are not eligible for the benefits referred to in Article 20(f) and (g) of Law No. 7210 and amendments thereto.

Where a processing or services enterprise, or an enterprise in any category other than that of trading enterprises, carries out activities as referred to in Article 17(b) of Law No. 7210 and amendments thereto, the profits generated from sales as a trading company shall be subject to income tax. The assessment of the portion of profits on which tax is payable shall be based on the ratio of the enterprise's sales revenue from trading activity to its total sales revenue. In any event, the performance of trading activities by businesses not classified as trading enterprises as from their admission to the regime may only be of a complementary and accessory nature, and shall be subject in all cases to prior authorization from Procomer and to notification of the Ministry of Finance. The performance of trading activities of a complementary nature by an enterprise in any of the categories referred to in Article 17(a), (c), (ch) and (e) of Law No. 7210 and amendments thereto shall not lead to the enterprise being recognised as belonging to the category under indent (b) of the said Article 17.

On receipt of the application, Procomer shall examine it carefully from the technical point of view and determine whether the activity proposed by the applicant is complementary to its principal activity which has already been authorized, and shall issue or deny authorization within a maximum deadline of 10 business days from the date the application is received. If Procomer has to request further information from the applicant, the time-limit shall be reckoned from the date of receipt of the additional information. The provisions of Chapter III of these Regulations shall apply in such cases, wherever applicable.

The term "complementary" in this context shall be understood as referring to trading activities which do not generate more than 30 per cent of the "total sales of the enterprise".

Article 44. It shall be the responsibility of the Directorate-General of the Ministry of Finance to lay down the requirements, obligations, standards and other procedural and monitoring mechanisms applicable to enterprises covered by the exemption from tax on profits laid down in law No. 7210 and amendments thereto.

If a change in the percentage of the exemption entitlement of a duty-free zone regime beneficiary (10 per cent, 75 per cent, 50 per cent or 0 per cent) occurs in the course of a financial year for tax on profits (either the normal financial year or non-standard financial year as authorized by the Directorate-General of Taxation of the Ministry of Finance), to calculate the tax payable for the period in question the enterprise shall proceed as follows: take the profit figure from the annual financial statements for the respective segments of the financial year for which each exemption percentage applied, and calculate the tax payable on those amounts, allowing for the exemption percentage in each case. The total payable will then be the sum total of the amounts so obtained.

## CHAPTER X

### Provisions on credit incentives

Article 45. Those beneficiaries which, after complying with the relevant requirements laid down in Law No. 7210 and amendments thereto and these regulations, then set up in duty-free zones located in "relatively less developed" zones according to the classification system laid down by the Executive in the Regulations implementing Law No. 7210 and amendments thereto, shall be entitled to receive a credit for five years, for the amount paid as wages and salaries during the calendar year immediately preceding the date of application for this benefit, after deduction of the amount paid to the Costa Rica Social Welfare Fund on those wages and salaries, in accordance with the certificate of the relevant payroll figures reported to the Fund. For the first year the credit shall be equal to ten per cent (10 per cent), and it shall decrease by two percentage points through to its termination in the last year. Enterprises wishing to claim this benefit must submit their application within five years from 8 October 1998. To this end, they must submit the relevant application to Procomer within one month of the end of the calendar year, accompanied by the following documents:

- (a) Certificate issued by the Costa Rica Social Welfare Fund, showing the amount paid by the enterprise as wages and salaries in the immediately preceding calendar year, and the total amount paid to the Fund on those wages and salaries;
- (b) certified copy of each of the monthly payrolls for the same period referred to in indent (a) above, which when added together must be fully consistent with the result figures shown in the certificate referred to in the said indent;
- (c) confirmation that the enterprise is located in a relatively less developed zone, according to the classification system laid down in regulations issued by the Executive.

Beneficiaries which have received this incentive in previous financial years must make express mention of this in their application for application of the percentage reduction laid down in Law No. 7210 and amendments thereto, accompanied by documentation confirming the approval for the immediately preceding financial year.

The benefit pursuant to this Chapter shall not apply to regime beneficiaries based in relatively less developed zones if the project they are carrying out already existed or was already in operation before the enterprise gained coverage under the duty-free zone regime, except where it can be demonstrated that the venture is a new project, or in exceptional cases, where justified by the nature of the project and the magnitude of the additional investments, as recommended by Procomer.

If the applicant is an enterprise which is based in an industrial park in a duty-free zone but which has obtained authorization to operate a satellite plant located in a relatively less developed zone, the benefits under this Article shall be granted solely for the wages and salaries paid by the enterprise to staff working exclusively in the satellite plant in question, as verified by Procomer, which may require an affidavit to this effect.

Article 46. Procomer shall verify compliance with the above requirements, determine whether the credit is to be granted, and for what amount, and forward a report to the Ministry of Foreign Trade.

Article 47. The credit referred to in this Chapter shall be paid by the Ministry of Finance, through the National Treasury, on presentation of the Government invoice, by means of the normal mechanisms in place.

## **CHAPTER XI**

### **Purchases and sales in the domestic market, and sub-contracting**

#### **SECTION I**

##### **Purchases by beneficiaries from the domestic market**

Article 48. Sales of materials, merchandise or services made by natural or legal persons whose address is within the national Customs territory to beneficiaries shall be regarded as exports.

Article 49. Pursuant to the provisions of Law No. 7210 and amendments thereto, authority is hereby given for an exemption from payment of General Sales Tax and Selective Consumption Tax on local purchases of materials and merchandise, as referred to in Article 3 of these Regulations, made by regime beneficiaries, and on the use of public and private services required for the generation of operating capacity and for staff training or associated purposes, i.e. transport, accommodation, meals and, in exceptional cases, any other items as specified by the Ministry of Finance by resolution with supporting arguments.

Article 50. The transactions carried out under the provisions of the preceding Article need not be accompanied by an Export Customs Declaration for each such purchase. The arrangements whereby General Sales Tax and Selective Consumption Tax are not payable shall be based on valid supporting documents issued by the domestic supplier enterprise and by the purchase order or equivalent document duly issued by the duty-free zone regime beneficiary. In exceptional cases duly classified as urgent purchases by the beneficiary, the only requirement, in the place of a purchase order or equivalent document, shall be for the invoice to be endorsed as "received as specified" by the person authorized for this purpose by the enterprise operating as a beneficiary of the duty-free zone regime.

Duty-free zone enterprises shall send electronically monthly Duty-Free Zone Customs Declarations for each supplier of materials and merchandise; submission of printouts to the customs authority shall not be required except for checks on the documents. In such cases a physical check on the merchandise by Customs authorities shall not be required.

The said Duty-Free Zone Customs Declaration must be transmitted within the first 10 business days of each month, with the information on the purchases of materials and merchandise made in the immediately preceding month.

In these cases, the beneficiary enterprise may print out on unstamped paper the information contained in the Duty-Free Zone Customs Declaration which has been transmitted; the document shall be signed by the person submitting the declaration and filed, under that person's responsibility, along with all original supporting documents, in accordance with the provisions of Article 30(b) of the General Customs Law and the procedures in force at the time for this purpose.

Procomer, acting in collaboration with the Ministry of Finance, shall coordinate its computer systems as required for the above purpose, so that it is also possible to produce reports for the Banco Central, the Ministry of Finance and Procomer, as the basis for the required retrospective verification procedures.

In the case of the purchase of public or private services on which tax is payable, the beneficiary must submit a monthly report to Procomer, in the format and using data media as

specified by Procomer for this purpose; Procomer shall forward the report to the Ministry of Finance and Banco Central de Costa Rica.

Article 51. The domestic supplier shall include in its monthly declaration of sales tax collected (D-151) the amount of sales made to regime beneficiary enterprises. The Ministry of Finance shall use this information and check it against the information forwarded by Procomer from the Duty-Free Zone Customs Declaration, or in the case of services the report produced by the beneficiary enterprise.

In addition to the information in its sales records as required under the legislation on General Sales Tax, the domestic supplier shall also provide the number of the purchase order or equivalent document issued by the duty-free zone enterprise and the date of the document, in cases where its customer was an enterprise covered by the duty-free zone regime.

Article 52. The documentary basis for movements of merchandise in provenance from the national Customs territory shall be the commercial invoice and purchase order, or document equivalent to a purchase order in the case of minor purchases, in accordance with the provisions of Article 50 of these Regulations.

Article 53. As the documentary basis for a sale to a regime beneficiary, a domestic supplier of services, materials and merchandise shall be required to provide the purchase order or equivalent document in the case of minor purchases or services, and in the case of urgent purchases it shall use the invoice copy with the relevant "received as specified" endorsement, as laid down in Article 50 of these Regulations. The supplier must keep copies of invoices to duty-free zone enterprises with the "received as specified" endorsement in the correct order.

On receipt by the competent Customs office for the duty-free zone regime beneficiary of the declaration transmitted by the beneficiary enterprise, it shall be considered that the export transaction has taken place, and accordingly that non-payment of General Sales Tax and Selective Consumption Tax was legitimate.

The sale invoice of the domestic supplier must show, in addition to the usual details, the number and date of the beneficiary's purchase order or the equivalent document.

Article 54. The improper use of exempt materials, merchandise or services shall be sufficient cause for the Ministry of Finance to proceed to collect the taxes not paid and to initiate the actions laid down in current legislation for that purpose.

## **SECTION II**

### **Sales into the national Customs territory**

Article 55. Regime beneficiary enterprises may make sales into the national Customs territory under the terms and conditions set down in Article 22 of Law No. 7210 and amendments thereto, and shall be subject to the taxes and procedures applicable to any import from abroad. The Duty-Free Zone Customs Declaration must also be submitted for the purpose of exit from the regime [area]. In the case of services enterprises, a commercial invoice must be provided for each sale into the local market, as the documentary basis for the transaction for tax, Customs and statistical purposes; a copy of the invoice shall be sent to Procomer. In the case of services involving the use of materials and merchandise (e.g. spare parts), a breakdown of these must be provided on a separate invoice, and the appropriate Duty-Free Zone Customs Declaration must be submitted.



The 25 per cent and 50 per cent limits pursuant to the said Article 22, as applicable, shall be calculated on the value of total sales, and shall be applied in each financial year to duty-free zone regime beneficiary enterprises which make domestic sales.

Article 56. Before making such sales, the beneficiary enterprise must provide Procomer with a breakdown of the projected sales for the period in question, on the form drawn up for this purpose.

Article 57. Where duty-free zone regime beneficiary enterprises make sales of goods and/or services into the national Customs territory, as referred to in the preceding paragraph, the percentage of exemption on imports of machinery, equipment and raw material, and also the exemption from tax on profits, shall be reduced on a pro rata basis, according to the ratio of goods and services brought into the national Customs territory on the one hand, to the total value of the enterprise's sales of goods and services on the other, in each of the relevant financial years.

For the purposes of compliance with the provisions of the last paragraph of the said Article 22 of Law No. 7210 and amendments thereto, the domestic component of the value of the end products brought into the national Customs territory shall form part of the tax base for assessment and payment of the applicable taxes.

The calculation of the proportion of goods and services brought into the national Customs territory shall be carried out according to the following formula:

$$\frac{\text{DS (domestic sales) VALUE}}{\text{TS (total sales) VALUE}} \times 100 = \text{percentage of domestic sales}$$

The calculation of the tax payable for machinery, equipment and raw materials shall be carried out as follows:

$$\text{TT (total tax)} \times \% \text{ of Domestic Sales} = \text{Tax Payable}$$

In addition to the foregoing, the following rules shall be applied for determination of the amount of tax payable for machinery, equipment and raw materials used by the enterprise in the production process for goods and services cleared through Customs into the national Customs territory:

- (a) The regime beneficiary must provide a certificate of the machinery, equipment and raw materials used in the production process for the end products sold locally, issued by a competent professional, and showing the numbers of the Duty-Free Zone Customs Declarations under which they entered the regime [area];
- (b) Promotora del Comercio Exterior (Procomer) shall provide the competent Customs office with its projections for total sales and domestic sales for the financial year, in terms of quantities, unit prices and total amounts, to enable the Customs office to set up the required monitoring arrangements. At the end of the financial year Promotora del Comercio Exterior (Procomer) shall provide the final statement of the total sales and domestic sales made by beneficiaries, expressed in the same terms;
- (c) the Customs value of the merchandise shall be set in accordance with the valuation procedures in force at the time of acceptance of the Customs declaration stating the tax exemptions;
- (d) the tax payable shall be based on the provisions of Article 55(e) of the General Customs Law;

- (e) payment of the tax in question shall be made in accordance with the relevant provisions of the final import procedure in force at the time;
- (f) in the case of locally purchased raw materials which have been incorporated in the end product, payment of selective consumption tax, sales tax and taxes on profits shall be made on the basis of the procedure laid down for this purpose by the Directorate-General of Taxation;
- (g) the reduction of the tax exemption for the import of machinery, equipment and raw materials shall be applied at the end of each financial year, by the percentage corresponding to the proportion of domestic sales;
- (h) in the case of machinery and equipment, the reduction of the exemption shall expire at the end of five years, in accordance with the provisions of Article 20 paragraph 5(b) the Duty-Free Zone Law, or sooner if the total of the percentages of domestic sales made during each financial year reaches 100 per cent before five years have passed.

### **SECTION III**

#### **Sub-contracting**

Article 58. Beneficiaries setting up in accordance with Article 17(a) of Law No. 7210 and amendments thereto may sub-contract a portion of their production or production process to:

- (a) Other duty-free zone beneficiaries;
- (b) any natural or legal person established within the national Customs territory, provided that at least 75 per cent of the total production volume of the enterprise covered by the regime is produced within the duty-free zone. In this case, the regime beneficiary enterprise may temporarily clear materials and merchandise involved in the sub-contracting arrangement through Customs into the national Customs territory.

Article 59. Beneficiaries wishing to form sub-contracting arrangements must submit an application to Procomer using the form or electronic archive set up for this purpose.

Article 60. The Administration of Procomer shall authorize the sub-contracting arrangement within three business days of submission of the application.

Article 61. The permitted period for sub-contracting shall be set by Procomer according to the needs of the party concerned, and may be extended if Procomer considers that the reasons forming the grounds for the authorization still apply. In any event, the maximum period, including extensions, may not exceed one year.

Article 62. Sub-contracting shall not require any lodgement of guarantees, without prejudice the provisions of Article 71 of the General Customs Law. In addition, the sub-contracting arrangement shall be subject to Customs monitoring and supervision, as set down in the General Customs Law and its implementing Regulations.

Article 63. Duty-free zone regime beneficiary enterprises shall be responsible for payment of any Customs or tax obligations arising from failure to comply with the terms and conditions of sub-contracting arrangements.

Article 64. The sub-contracting beneficiary enterprise must submit a report at the end of the sub-contracting period to Procomer on the amounts, percentages and terms and conditions of the operations sub-contracted; where an extension is being sought, the report must be submitted jointly with the application, 15 calendar days before the expiry of the sub-contracting term. If any Customs irregularity is found, Procomer shall immediately notify the competent Customs office accordingly, for the appropriate action. Similarly, the competent Customs office shall notify Procomer of any instances of non-compliance with sub-contracting terms and conditions which impact on the interests of the State in terms of tax and Customs, for initiation of the relevant procedure, without prejudice to any administrative or criminal penalties which may be applicable.

Article 65. If the sub-contracting beneficiary enterprise fails to submit the report referred to in the preceding Article, or has failed to comply with the terms and conditions under which the sub-contracting arrangement was authorized, Procomer may revoke the authorization, and shall notify the Ministry of Foreign Trade for initiation of the appropriate procedure.

## **CHAPTER XII**

### **Procedures applicable to the transit or movement of materials and merchandise**

#### **SECTION I**

##### **General provisions**

Article 66. Any transit or movement of materials and merchandise to or from a duty-free zone must be carried out in accordance with the provisions of this Chapter, the General Customs Law and its implementing Regulations, and any other operating policy instructions issued by the Directorate-General of Customs. In the case of the inward Customs clearance of materials and merchandise, current Customs rules shall also apply.

Article 67. Any movement of materials and merchandise involving a Customs transaction shall require completion of the Duty-Free Zone Customs Declaration, except for donations and purchases of services. A copy of the declaration must be submitted by the enterprise or the Customs office, as applicable, to Procomer.

The Customs seals supplied by Procomer must also be used, except in the case of temporary inward clearance operations, donations, sub-contracting arrangements, local purchases or transfers or sales between enterprises located in the same industrial park.

Article 68. Procomer shall provide Duty-Free Zone Customs Declaration forms, which shall be numbered consecutively. Procomer shall keep a register of forms supplied and used, and any forms spoiled by the beneficiary.

Article 69. As regards the procedures applicable to transits or movements of materials and merchandise, duty-free zone regime beneficiary enterprises shall be subject to the relevant provisions of the General Customs Law, its implementing Regulations, and any other administrative provisions which are issued with supporting reasons and are of general applicability.

## **SECTION II**

### **Inward clearance of materials, merchandise and other items from abroad**

Article 70. All beneficiaries may carry out inward clearance under the regime of the materials and merchandise referred to in Article 20 of Law No. 7210 and amendments thereto.

Article 71. In the case of materials and merchandise in provenance from abroad, the packages, in addition to the marks and countermarks on each, must bear a label reading "Duty-Free Zone, Costa Rica", except in cases where this is physically impossible. If this requirement is not met, the Customs office shall initiate the relevant penalties.

## **SECTION III**

### **Movements of materials and merchandise consigned to locations within the national Customs territory**

Article 72. Inward clearance transactions for materials and merchandise in provenance from a duty-free zone shall be carried out in accordance with these Regulations, using the Duty-Free Zone Customs Declaration and the relevant Customs procedures.

## **SECTION IV**

### **Temporary inward clearance**

Article 73. Beneficiaries may carry out temporary inward clearance into national Customs territory for machinery, vehicles and equipment in provenance from duty-free zones where this is for the purpose of processing, repairing, reconstructing, installing, assembling or incorporation in sub-assemblies, or for trade fairs, staff training, company presentations or demonstrations, provided that the activity does not constitute manufacture forming part of the production process of the enterprise based in the duty-free zone. The above is subject to compliance with the stipulations set down in Article 24 of Law No. 7210 and amendments thereto.

Article 74. Beneficiaries may carry out temporary inward clearance into national Customs territory for materials and merchandise for the purpose of sub-contracting arrangements, as specified in Section III of Chapter XI of these Regulations, without prejudice to the provisions of the preceding Article.

Article 75. In such cases, the beneficiary is also required to forward the relevant Duty-Free Zone Customs Declarations to the competent Customs office, and to subject the merchandise to inspection by the random check method; the Customs Declaration must include the period for which the materials and merchandise inward cleared into the national Customs territory on a temporary basis will have to remain there.

## **SECTION V**

### **Movements between beneficiaries or between beneficiaries and satellite plants**

Article 76. The documentary basis for movements of materials and merchandise between regime beneficiaries or a transit of materials and merchandise transported from a duty-free zone to a satellite plant and vice versa shall be the Duty-Free Zone Customs Declaration. In the latter case, no guarantee lodgement shall be required.

## **SECTION VI**

### **Sales under other special export regimes**

Article 77. Beneficiaries may make sales of any kind to natural or legal persons which are beneficiaries of other special export regimes, subject to prior authorization from Procomer. Procomer must rule on the matter within a maximum period of two business days.

Article 78. Any sales made to inward processing regime beneficiaries must have been authorized by Procomer.

## **CHAPTER XIII**

### **Scrap, by-products and waste**

Article 79. In accordance with the provisions of Article 16 of Law No. 7210 and amendments thereto, any beneficiaries deciding to dispose of scrap, by-products or waste must notify the municipality for the location where they are based to that effect, in writing. [Personnel of] the municipality must come to collect the scrap, by-products or waste within a period of three days as from such notification, and shall draw up a deed, to be signed by the official at the Customs post.

If [personnel of] the municipality fail to appear within the above deadline, or if the municipality indicates it is not interested in taking possession of these items, the beneficiary may donate them, destroy them or arrange for their inward clearance, subject to payment of tax in accordance with the provisions of this Chapter.

Article 80. In addition to the provisions of the preceding Article, the beneficiaries, working through the Joint Social Assistance Institute (IMAS), may donate raw materials, finished products, semi-manufactured goods, waste or capital goods to charitable institutions, educational centres or State institutions, under the procedure laid down in these provisions.

Article 81. When the donation is made, the competent Customs office shall verify that the donation is being made to charitable institutions, educational centres or State institutions on the basis of the list issued half-yearly by IMAS, which list may be modified with prior authorization from the institution; in addition it shall draw up a deed, with one copy going to the beneficiary of the donation, another to the competent Customs office, and the original to be held by the organization. The deed shall constitute a Duty-Free Zone Customs Declaration, and shall be used for the transfer of the materials and merchandise so donated.

Article 82. Wherever it is necessary to destroy scrap or waste forming part of or arising from the production process of the beneficiary, the beneficiary shall submit an application accordingly to the competent Customs office.

The destruction operation shall be recorded in a deed, to be signed by the Customs official and a representative of the beneficiary.

## **CHAPTER XIV**

### **Surrender**

Article 83. Materials and merchandise inward-cleared into duty-free Zones shall be subject to surrender in favour of the revenue authorities only in the following situations:

- (a) Where the owner has expressly relinquished them, by written notification sent to Procomer and the competent Customs office;
- (b) where the condition laid down in Article 56(f) of the General Customs Law is met.

In both these situations, the competent Customs office shall proceed in accordance with the relevant legislation, and shall notify Comex accordingly. In the case of an auction sale, the procedure followed shall be that laid down in Articles 73 ff. of the General Customs Law and Articles 188 ff. of its implementing Regulations.

## **CHAPTER XV**

### **Mergers**

Article 84. If several duty-free zone regime beneficiary enterprises wish to merge, they shall notify Procomer to that effect prior to carrying out the merger, specifying the numbers of employment positions and levels of investment they intend to maintain. If it is decided that as a consequence of the merger the resulting enterprise is in the situation described in Article 20*bis* of the Duty-Free Zone Law for the purposes of qualifying for limited-term tax benefits, the applicable term shall be that granted in the executive resolution for the enterprise admitted most recently to the regime; otherwise the remaining term applied to the entity shall be that of the enterprise of longest standing in the regime.

Article 85. If two or more regime beneficiary enterprises merge without completing the procedure referred to in the preceding Article, the new enterprise or dominant enterprise must fulfil the requirements in terms of number of employment positions and investment levels for all of the beneficiaries. The executive resolution authorizing the merger must specify the sum totals of the said numbers of employment positions and investment amounts. The calculation of the term for the regime incentives shall be based on the term specified in the executive resolution granting regime status to the longest-standing enterprise in the regime.

Article 86. In any of the situations referred to in the two preceding Articles, the enterprise in question must provide Procomer with the following documents within a maximum deadline of one month from entry of the enterprise in the Public Register:

- (a) Notarial certificate of registration of the merger in the Public Register;
- (b) certified copy of the minuted deed recording the merger resolution;
- (c) copy of the notice published in the official gazette, *La Gaceta*.
- (d) application for modification of the executive resolution granting regime status, duly signed by the legal representative of the enterprise. If the enterprise has several plants, the application must specify which is to be the principal plant.

## **CHAPTER XVI**

### **Final provisions**

Article 87. Procomer shall receive, assess and process applications from parties interested in joining the duty-free zone regime, and monitor the investment amounts and other parameters laid

down in the executive resolution granting regime status. Procomer shall also receive and assess the annual reports to be submitted by beneficiary enterprises and act in the matters expressly designated in these Regulations as falling within its area of competence.

The Executive, through the Ministry of Foreign Trade, shall pass resolutions granting regime status, revoking regime status and making modifications to the relevant executive resolutions, and also for initiating and concluding any appropriate penalty procedures, in each case on the basis of technical reports and recommendations from Procomer and from the competent agencies of the Ministry of Finance.

All matters relating to the monitoring and auditing of Customs operations and tax exemptions are within the area of competence of the relevant agencies of the Ministry of Finance, and where applicable of Procomer, where its involvement is provided for in Law No. 7210 and amendments thereto, or in these Regulations.

If in the course of exercising its powers Procomer detects the possible presence of Customs or tax irregularities, it shall immediately notify the Ministry of Finance accordingly, for the appropriate legal action. Similarly, the competent agencies of the Ministry of Finance must notify Procomer of any irregularity they detect which may provide the basis for the initiation of a penalty procedure pursuant to Article 32 of Law No. 7210 and amendments thereto. On the basis of that information, and its own investigations where applicable, Procomer shall forward a recommendation to the Ministry of Foreign Trade for the initiation of the appropriate penalty procedure as soon as possible, in accordance with the said Article 32.

Article 88. In accordance with the provisions of Article 4 of the Duty-Free Zone Law Amendment Law, Law No. 7830 of 22 September 1998, the Directorate-General of Customs is hereby authorized, acting by resolution and with due regard for the special circumstances of service provider enterprises and enterprises administering industrial parks for use by service provider enterprises covered by the duty-free zone regime, to exempt such enterprises, in full or in part, according to the circumstances in each case, from the requirements relating to the receipt and clearance of merchandise in their capacity as auxiliary Customs agents, contained in the Regulations implementing the General Customs Law and other related provisions. The above is without prejudice to any other alternative monitoring measures laid down which are appropriate in terms of the nature and activity of such service provider enterprises.

Article 89. Procomer shall ensure that the Directorate-General of Customs is provided with the assistance required for the satisfactory performance of its auditing supervisory functions.

Article 90. The Directorate-General of Customs must notify the Ministry of Foreign Trade and Procomer of any final penalties it imposes on enterprises covered by the duty-free zone regime.

Article 91. Hereby repealed are the Regulations implementing the Duty-Free Zone Law, Executive Decree No. 28451-H-COMEX of 22 December 1999 and amendments thereto.

Article 92. To apply as from publication.

#### TRANSITIONAL PROVISIONS

Transitional Clause I. The additional exemption from income tax in the case of reinvestments as referred to in Article 20(1) of Law No. 7210 and amendments thereto, and in Article 39 of these Regulations, shall apply to regime beneficiary enterprises making the said reinvestments as from 8 October 1998, being the date of the publication of the amendments to law No. 7210 implemented by Law No. 7830, provided that the reinvestments are made after the end of the fourth year and before the beginning of the eighth year of operations of the enterprise in question under the duty-free regime,

as laid down in the above-mentioned Article 20(l), and subject to compliance with the other relevant provisions of Law No. 7210 and amendments thereto, and these Regulations.

Transitional Clause II. Enterprises based in relatively less developed zones which joined the duty-free zone regime and presented their first application for the Credit prior to 8 October 1998 shall be entitled to continue receiving the Credit in accordance with the rules applicable up to that date, up to expiry of a period of five years, subject to compliance with the applicable legal and regulatory requirements.

Transitional Clause III. For enterprises which joined the duty-free zone regime and applied for authorization to make sales into the national Customs territory before 8 October 1998, the requirement regarding the percentage of sales into the national Customs territory shall be percentage applicable prior to that date.

Transitional Clause IV. Until such time as the required adjustments are made for the transmission of the monthly Duty-Free Zone Customs Declaration to be carried out by duty-free zone enterprises for their local purchases, the enterprise and its suppliers shall use the previously applicable procedure for local purchases. In any event, these adjustments must be made within a maximum period of three months from the entry into force of these Regulations.

Transitional Clause V. Until such time as the required adjustments are made for the transmission of the Duty-Free Zone Customs Declaration, the enterprise must use the procedure currently in place for this operation. In any event, these adjustments must be made within a maximum of three months from the entry into force of these Regulations.

Transitional Clause VI. The Ministry of Finance shall notify public-sector and private-sector providers of public services that they are not required to apply the general memorandum regarding the exemption from general sales tax, in accordance with the provisions of Article 9 of the Law regulating that tax and Article 23 of Law No. 7210 and amendments thereto.

Given at the Presidency of the Republic. San José, on the eighteenth day of June in the year two thousand and one.

MIGUEL ANGEL RODRÍGUEZ ECHEVERRÍA. Minister of Foreign Trade, F.Tomás Dueñas, and Acting Minister of Finance Carlos Muñoz Vega.—one.—(Application No. 43913).—C-237620.—(D29606-43195).



**GENERAL CUSTOMS LAW**

**No. 7557**

**GENERAL CUSTOMS LAW**

**THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF COSTA RICA,**

**HEREBY DECREES:**

**CHAPTER V Regimes for exemption from payment of Customs tax**

**SECTION I Duty-free zones**

Article 175. Definition of duty-free zone boundaries. The boundaries of the geographical area in which an enterprise covered by the duty-free zone regime is located must be clearly defined, so that the entry and exit of persons, vehicles, transport units or merchandise is only possible through the stations or places provided for Customs monitoring purposes.

Operating hours shall be as laid down by the National Customs Service, without prejudice to authorization for operations outside normal business hours. The regime supervisory body may provide the funds required for continuous Customs services, twenty-four hours a day.

Article 176. Customs monitoring. The Customs office shall carry out the following Customs monitoring procedures, among others:

- (a) Permanent or intermittent watch at boundaries and on access roads;
- (b) checks on the use and disposal of the merchandise in accordance with the purpose for which it was brought into the regime area;
- (c) inspection of beneficiary enterprises.

The regime supervisory body shall provide the Customs office with the relevant information on the operations undertaken by the enterprises, using the methods laid down by the Directorate-General of Customs, without prejudice to the ability of the Customs office to make direct requests to the enterprises for records of production costs and processes, permanent inventories and accounting records and attachments for parties operating under the regime, in accordance with the relevant regulatory provisions.

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**CHAPTER VI Processing regimes**

**SECTION I Inward processing regime**

Article 179. Inward processing regime. The inward processing regime is the Customs regime used to receive merchandise in the national Customs territory with suspension of all types of tax, subject to lodgement of a guarantee deposit. The merchandise in question must be re-exported, within time-limits laid down in the regulations, after undergoing processing, repair, reconstruction, installation or assembly, or after being incorporated in sub-assemblies, machinery, transport equipment in general or appliances with a higher degree of technological or functional complexity, or

after being used for other similar purposes, in situations as laid down in regulations or provisions issued for this purpose by the competent administration body. Article 180.—Powers of the competent administration body. The regime administration body has authority to act as follows:

- (a) Formulate policy for the application and operation of the regime;
- (b) grant and cancel authorizations for the regime on a case by case basis;
- (c) decide on the merchandise which may enter the country under this regime, and the percentages of scrap and waste, as set down in the regulations.

The administration body must coordinate its functions and activities with the Directorate-General of Customs, which shall appoint a representative for dealings with the organization.

Article 181. Monitoring by the Customs office. Without prejudice to the powers granted in this Law, the Customs office has responsibility for monitoring the use and intended purpose of the merchandise covered by the regime.

In exercising that monitoring function, the Customs office may:

- (a) Audit the records of production costs and processes, permanent inventory records and accounting records and attachments for merchandise covered by the regime;
- (b) monitor the correct use of the merchandise in accordance with the intended purpose for which it was brought into the regime;
- (c) monitor the movement, use and intended purpose of the merchandise, and guarantees, waste disposal and donations in accordance with procedures laid down for this purpose by the Directorate-General of Customs.

Article 182. Obligations of beneficiary enterprises. Beneficiary enterprises under this form of regime must comply with the following obligations, without prejudice to any obligations they may have as auxiliary Customs agents:

- (a) To commence operations within a period of six months from being sent the resolution authorizing their regime status. This deadline may be extended by the administration body for up to a further six months, following an application with supporting arguments from the party concerned. If operations have still not commenced on expiry of that period, the authorization shall be regarded as cancelled;
- (b) to provide the Customs office with the required information on their activities and records of their operations;
- (c) to submit information and reports on their operations to the Customs office, within the deadlines set in the relevant regulations;
- (d) to provide full identification of machinery, equipment and spare parts in accordance with the provisions laid down for this purpose by the Directorate-General of Customs;
- (e) to mark clearly with the trading name of the enterprise the installations where the enterprise operates;

- (f) to integrate its systems with the IT systems authorized by the Directorate-General of Customs;
- (g) to register with the competent Customs office and keep the registration entry up-to-date;
- (h) to comply with organizational, procedural and monitoring provisions issued by the Directorate-General of Customs;
- (i) to keep all information relating to entry, imports and re-exports of merchandise in official registers or forms as designed or authorized by the Directorate-General of Customs; in addition, to retain these for a minimum period of five years for consultation by the Customs office in order to exercise its monitoring function;
- (j) to comply with the rules relating to the storage and placement of merchandise, as stated in the regulations;
- (k) any other obligation or operating condition laid down in the regulations.

Article 183. Tax liability. The enterprise shall be liable for any damage or loss affecting the merchandise held within its enclosed area, and shall still be obliged to pay the relevant taxes, except in the case of duly substantiated acts of God or force majeure.

Inward cleared merchandise under the regime must remain within authorized premises.

Article 184. Misuse of regime status. Misuse of regime status shall be established via the mechanisms laid down in regulations. The basis for challenges shall be reports and declarations on entry, use and consumption, deeds recording donation and destruction operations, and definitive re-export and import transactions carried out.

Article 185. Statutory lien. The machinery, equipment and raw materials under the regime shall be under a first-rank statutory lien in favour of the revenue authorities, for which a Customs lien shall be registered, by request of the Customs office or the enterprise in question, in the Register of Liens in the Public Register, without payment of any tax. No additional guarantee shall be required.

The owners of goods entering under this regime shall by the mere fact of sending them to Costa Rica grant sufficient powers to the consignee to place the goods under such a lien, which shall take precedence over any other lien or guarantee.

The Customs office shall enforce the lien if the merchandise has not been re-exported or definitively imported on expiry of the period stipulated as the time for which the merchandise may be held under the regime.

The guarantee shall also be enforced if it can be demonstrated that the enterprise has made improper use of the machinery, equipment or raw materials, or disposed of them other than as specified; this shall be without prejudice to any other penalties applicable.

Article 186. Disposal of waste, by-products and samples

Waste and by-products must be re-exported, definitively imported, or donated to the State.

Any samples, waste or by-products which cannot be returned abroad or donated must be destroyed under the supervision of the Customs office.

Beneficiaries may donate semi-manufactured goods, waste, seconds, samples, spare parts, accessories and capital goods to the competent entity of the Ministry of Finance, which in turn may allocate them to charitable institutions, educational centres and State institutions.

**REGULATIONS IMPLEMENTING THE GENERAL CUSTOMS LAW,  
LAW NO. 7557 OF 20 OCTOBER 1995  
NO. 25270-H**

**THE PRESIDENT OF THE REPUBLIC  
AND THE MINISTER OF FINANCE,**

under the powers conferred on them by Article 140, (10), (4) and (18) of the Political Constitution of the Republic of Costa Rica, whereas:

- I. Law No. 7485 of 6 April 1995 approved the Amendment Protocol to the Central American Uniform Customs Code II;
- II. Law No. 7557 of 20 October 1995 promulgated the General Customs Law;
- III. pursuant to Transitional Clause V of the General Customs Law, the Executive is required to issue implementing regulations, now therefore

DECREE:

the following,

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**SECTION IV  
Enterprises under the inward processing regime**

Article 154. Specific authorization procedure for enterprises operating under the inward processing regime

For the granting of Auxiliary status, enterprises operating under the inward processing regime, in addition to meeting the requirements laid down in specific legislation, shall be required to provide the regime administration body with proof of compliance with the general and specific requirements laid down in the Law and these Regulations for this category of Auxiliary.

Article 155. Requirements for the receipt and clearance of merchandise. For the receipt and clearance of imported and exported merchandise to and from its plants, the inward processing enterprise must meet the following requirements:

- (a) Presence of sufficient facilities, separated from its processing areas, for the performance of inward goods acceptance, inspection, cargo handling and clearance of merchandise;
- (b) presence of equipment to perform the operations referred to in the preceding letter;
- (c) controlled access to the facilities, such as to guarantee the security of the merchandise.

For the purposes of this Article, the Customs supervising office shall inspect the facilities in question. The application shall not be approved in any circumstances if the recommendation from the Customs office is unfavourable.

Article 156. Additional obligations

Inward processing enterprises must also fulfil the following obligations:

- (a) To apply for registration of Customs liens in the relevant register of the Public Register within a period of three business days following the Customs release of the merchandise. Upon such registration, the enterprise must notify the Customs supervising office to that effect within three business days;
- (b) to keep copies of the entry and exit declarations for the merchandise, Customs liens, the resolution authorizing regime status and the authorized modes of production, service sub-contracting contracts and reports submitted to the regime administration body;
- (c) to notify the Customs office of the occurrence of any loss, theft, robbery, damage or any other circumstances affecting the merchandise entering under the regime;
- (d) to keep entry and inventory records using computerised systems or on other duly authorized media, in accordance with the information requirements laid down by the Directorate-General.

Article 157. Permanent or temporary cessation of operations.

An inward processing enterprise voluntarily applying to cease its operations permanently or temporarily, without prejudice to the notification required from the regime administration body, shall be required to notify the Customs supervising office to that effect, so that the Customs office may take the required steps to examine the premises of the enterprise to record the presence of any merchandise subject to Customs control, and if applicable to order the transfer to a Customs warehouse.

Once it has been established that there are no obligations outstanding to the revenue authorities, the Directorate-General shall suspend or cancel the party's status as an Auxiliary in the relevant register.

If there are Customs duties outstanding for payment, the Directorate-General shall initiate the required administrative and judicial procedures for collection.

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## **SECTION VII**

### **Duty-Free Zone Enterprises**

Article 163. Specific authorization procedure for enterprises operating under the inward processing regime.

For the granting of Auxiliary status, enterprises operating under the duty-free zone regime, in addition to meeting the requirements laid down in specific legislation, shall be required to provide the regime administration body with proof of compliance with the general and specific requirements laid down in the law and these Regulations for this category of Auxiliary.

Article 164. Requirements for the receipt and clearance of merchandise

For the receipt and clearance of imported and exported merchandise to and from its plants, the duty-free zone enterprise must meet the following requirements:

- (a) Presence of sufficient facilities, separated from its operating areas, for the performance of inward goods acceptance, inspection, cargo handling and clearance of merchandise;
- (b) presence of equipment to perform the operations referred to in the preceding letter;
- (c) controlled access to the facilities, such as to guarantee the security of the merchandise;
- (d) notification of the Customs office regarding the occurrence of any loss, theft, robbery, damage or other circumstance affecting the merchandise entering under the regime;
- (e) keeping entry and inventory records using computerised systems or on other duly authorized media, in accordance with the information requirements laid down by the Directorate-General.

For the purposes of this Article, the Customs supervising office shall inspect the facilities in question. The application shall not be approved in any circumstances if the recommendation from the Customs office is unfavourable.

Article 165. Documents to be kept by the enterprise.

Duty-free zone enterprises must keep copies of the authorized forms for the entry and exit of merchandise, a copy of the resolution authorizing regime status, copies of service sub-contracting contracts with other enterprises, and copies of the reports submitted to the regime administration body.

Article 166. Permanent or temporary cessation of operations.

A duty-free zone enterprise voluntarily applying to cease its operations permanently or temporarily, without prejudice to the notification required from the regime administration body, shall be required to notify the Customs supervising office to that effect, so that the Customs office may take the required steps to examine the premises of the enterprise to record the presence of any merchandise subject to Customs control, and if applicable to order the transfer to a Customs warehouse.

Once it has been established that there are no obligations outstanding to the revenue authorities, the Directorate-General shall suspend or cancel the party's status as an Auxiliary in the relevant register.

If there are Customs duties outstanding for payment, the Directorate-General shall initiate the required administrative and judicial procedures for collection.

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## **CHAPTER X**

### **Duty free zone regime**

#### **SECTION I**

##### **General provisions**

###### Article 474. Applicable procedures

The procedure for authorization of the transit and clearance of goods being sent to enterprises operating under the duty-free zone regime shall be carried out in accordance with the provisions of Titles VI and VII of Chapter I of these Regulations except where specified otherwise in this Title. Customs declarations for this regime shall be made using the "Standard Duty-Free Zone Form" approved by the Directorate-General.

###### Article 475. Authorizations from authorities other than Customs authorities

The provisions of these Regulations may not be interpreted as prejudicing the authority of any authorities other than Customs authorities required to authorize or intervene in the operations performed by regime beneficiaries.

#### **SECTION II**

##### **Clearance of merchandise in provenance from abroad**

###### Article 476. Receipt of declaration and verification inspection

On receipt of the Customs declaration, the Customs supervising office shall state whether verification of the declaration by the physical inspection of the merchandise needs to be ordered.

###### Article 477. Clearance of merchandise without physical inspection

In cases where it is not deemed necessary to carry out a physical inspection, the party submitting the declaration shall be notified of authorization of the Customs release of the merchandise.

The party submitting the declaration shall be responsible for supervising the operation of the unloading of the transportation units, and shall notify the Customs supervising office immediately of any discrepancy from the information declared to Customs.

###### Article 478. Performance of the physical inspection procedure

If the physical inspection of the merchandise is ordered, the Customs office shall notify the enterprise immediately to that effect, and shall designate the official responsible for carrying out the inspection. The competent official shall go to the premises of the enterprise and proceed to arrange the unloading of merchandise from the transportation unit and the physical inspection. If the result of the physical inspection corresponds to the information declared to Customs, the official shall immediately authorize the release of the merchandise.

###### Article 479. Discrepancies found in physical inspection

If the result of the physical inspection identifies discrepancies between the information declared and the information which should have been declared, the official shall note this fact and report the matter to the Customs authorities. As part of the same procedure, the official may implement measures to secure the merchandise, where the discrepancies found relate to the quantity or nature of the merchandise actually unloaded. The Customs authorities shall make the required



corrections and adjustments on the declaration, and shall initiate the appropriate administrative proceedings, notifying the party submitting the declaration accordingly.

### **SECTION III**

#### **Clearance of merchandise to a destination abroad**

##### **Article 480. Receipt of declaration and verification inspection**

On receipt of the Customs declaration, arrangement shall be made for a physical inspection or the Customs release of the merchandise shall be authorized. The declaration must show the place where the merchandise is to be loaded on board the transportation unit or packed for transportation.

##### **Article 481. Clearance of merchandise without physical inspection**

In cases where it is not deemed necessary to carry out a physical inspection, the party submitting the declaration shall be notified of authorization of the Customs release of the merchandise.

The party submitting the declaration shall be responsible for supervising the operation of the loading of the transportation unit or packing of the goods.

Where the merchandise is to be loaded in transportation units for transit to a maritime port, the party submitting the declaration must place Customs seals on the transportation unit and advise the Customs supervising office of the date, the exact departure time of the vehicle and transportation unit, and the identification details of the Customs seals placed on the consignment.

Where the merchandise has to be packed for transport to an airport, the party submitting the declaration must transmit to the Customs supervising office notification of the completion of the packing operation and the date and approximate time of departure of the merchandise by air.

##### **Article 482. Performance of the physical inspection**

If the physical inspection of the merchandise is ordered, the Customs office shall notify the enterprise immediately to that effect, and shall designate the official responsible for carrying out the inspection. The competent official shall go immediately to the premises of the enterprise or the place where the merchandise is being packaged and carry out the physical inspection. If the result of the physical inspection corresponds to the declaration and other information provided, the official shall immediately authorize the release of the merchandise, and shall supervise its loading or packing and verify the placement and identification details of the Customs seal on the transportation unit. The party submitting the declaration shall proceed in accordance with the second and third paragraphs of the preceding Article.

##### **Article 483. Discrepancies found in physical inspection**

If the result of the physical inspection identifies discrepancies between the information declared and the information which should have been declared, the official shall note this fact and report the matter to the Customs. As part of the same procedure, the official may implement measures to secure the merchandise, where the discrepancies found relate to the quantity or nature of the merchandise. The Customs authorities shall make the required corrections and adjustments on the declaration, and shall initiate the appropriate administrative proceedings, notifying the party submitting the declaration accordingly.

Discrepancies identified from the physical inspection shall not interrupt the clearance of the merchandise any more than required for the required sampling and testing procedures, in cases where there is evidence that a Customs offence may have been committed.

Article 484. Completion of the operation

The exit Customs office shall notify the Customs supervising office of the departure from Costa Rica of the transportation unit.

Article 485. Other operations under the regime

The procedures for the authorization of other operations of enterprises operating as duty-free zone regime beneficiaries shall be subject, as applicable, to the provisions of these Regulations and the Regulations implementing the Duty-Free Zone Regime Law, in accordance with the relevant Customs regime.

**CHAPTER X**  
**Duty-free zone regime**

**SECTION I**  
**General provisions**

Article 474. Applicable procedures

The procedure for authorization of the transit and clearance of goods being sent to enterprises operating under the duty-free zone regime shall be carried out in accordance with the provisions of Titles VI and VII of Chapter I of these Regulations except where specified otherwise in this Title. Customs declarations for this regime shall be made using the "Standard Duty-Free Zone Form" approved by the Directorate-General.

Article 475. Authorizations from authorities other than Customs authorities

The provisions of these Regulations may not be interpreted as prejudicing the authority of any authorities other than Customs authorities required to authorize or intervene in the operations performed by regime beneficiaries.

**SECTION II**  
**Clearance of merchandise in provenance from abroad**

Article 476. Receipt of declaration and verification inspection

On receipt of the Customs declaration, the Customs supervising office shall state whether verification of the declaration by the physical inspection of the merchandise is required.

Article 477. Clearance of merchandise without physical inspection

In cases where it is not deemed necessary to carry out a physical inspection, the party submitting the declaration shall be notified of authorization of the Customs release of the merchandise.

The party submitting the declaration shall be responsible for supervising the operation of the unloading of the transportation unit, and shall notify the Customs supervising office immediately of any discrepancy from the information declared to Customs.

Article 478. Performance of the physical inspection procedure

If the physical inspection of the merchandise is ordered, the Customs office shall notify the enterprise immediately to that effect, and shall designate the official responsible for carrying out the inspection. The competent official shall go to the premises of the enterprise and proceed to arrange the unloading of merchandise from the transportation unit and the physical inspection. If the result of the physical inspection corresponds to the information declared to Customs, the official shall immediately authorize the release of the merchandise.

Article 479. Discrepancies found in physical inspection

If the result of the physical inspection identifies discrepancies between the information declared and the information which should have been declared, the official shall note this fact and report the matter to the Customs. As part of the same procedure, the official may implement measures to secure the merchandise, where the discrepancies found relate to the quantity or nature of the merchandise actually unloaded. The Customs authorities shall make the required corrections and adjustments on the declaration, and shall initiate the appropriate administrative proceedings, notifying the party submitting the declaration accordingly.

**SECTION III**  
**Clearance of merchandise to a destination abroad**

Article 480. Receipt of declaration and verification inspection

On receipt of the Customs declaration, arrangements shall be made for a physical inspection or the Customs release of the merchandise shall be authorized. The declaration must show the place where the merchandise is to be loaded on board the transportation unit or packed for transportation.

Article 481. Clearance of merchandise without physical inspection

In cases where it is not deemed necessary to carry out a physical inspection, the party submitting the declaration shall be notified of authorization of the Customs release of the merchandise.

The party submitting the declaration shall be responsible for supervising the operation of the loading of the transportation unit or packing of the goods.

Where the merchandise is to be loaded in transportation units for transit to a maritime port, the party submitting the declaration must place Customs seals on the transportation unit and advise the Customs supervising office of the date, exact departure time of the transportation unit, and the identification details of the Customs seals placed on the consignment.

Where the merchandise has to be packed for transport to an airport, the party submitting the declaration must transmit to the Customs supervising office notification of the completion of the packing operation and the date and approximate time of departure of the merchandise by air.

Article 482. Performance of the physical inspection

If the physical inspection of the merchandise is ordered, the Customs office shall notify the enterprise immediately to that effect, and shall designate the official responsible for carrying out the inspection. The competent official shall go immediately to the premises of the enterprise or the place where the merchandise is being packaged and proceed to arrange the physical inspection. If the result of the physical inspection corresponds to the declaration and other information provided, the official

shall immediately authorize the release of the merchandise, and shall supervise its loading or packing and verify the placement and identification details of the Customs seal on the transportation unit. The party submitting the declaration shall proceed in accordance with the second and third paragraphs of the preceding Article.

Article 483. Discrepancies found in physical inspection

If the result of the physical inspection identifies discrepancies between the information declared and the information which should have been declared, the official shall note this fact and report the matter to the Customs authorities. As part of the same procedure, the official may implement measures to secure the merchandise, where the discrepancies found relate to the quantity or nature of the merchandise. The Customs authorities shall make the required corrections and adjustments on the declaration, and shall initiate the appropriate administrative proceedings, notifying the party submitting the declaration accordingly.

Discrepancies identified from the physical inspection shall not interrupt the clearance of the merchandise any more than required for the necessary sampling and testing procedures, in cases where there is evidence that a Customs offence may have been committed.

Article 484. Completion of the operation

The exit Customs office shall notify the Customs supervising office of the departure from Costa Rica of the transportation unit.

Article 485. Other operations under the regime

The procedures for the authorization of other operations of enterprises operating as duty-free zone regime beneficiaries shall be subject, as applicable, to the provisions of these Regulations and the Regulations implementing the Duty-Free Zone Regime Law, in accordance with the relevant Customs regime.

...

**CHAPTER XIII**  
**Inward processing regime**

**SECTION I**  
**General Provisions**

Article 496. Applicable procedures

The procedure for authorization of the transit and clearance of goods being sent to enterprises operating under the inward processing regime shall be carried out in accordance with the provisions of Titles VI and VII of Chapter I of these Regulations except where specified otherwise in this Title. Customs declarations for this regime shall be made using the "Entry and Exit Form" approved by the Directorate-General.

Article 497. Authorizations from authorities other than Customs authorities. The provisions of these Regulations may not be interpreted as prejudicing the authority of any authorities other than Customs authorities required to authorize or intervene in the operations performed by regime beneficiary enterprises.

## **SECTION II**

### **Clearance of merchandise in provenance from abroad**

#### **Article 498. Receipt of declaration and verification inspection**

On receipt of the Customs declaration, the Customs supervising office shall state whether verification of the declaration by the physical inspection of the merchandise is required, or if the Customs release of the merchandise is authorized.

#### **Article 499. Clearance of merchandise without physical inspection**

In cases where it is not deemed necessary to carry out a physical inspection, the party submitting the declaration shall be notified of authorization of the Customs release of the merchandise.

The party submitting the declaration shall be responsible for supervising the operation of the unloading of the transportation unit, and shall notify the Customs supervising office immediately of any discrepancy from the information declared to Customs.

#### **Article 500. Performance of the physical inspection procedure**

If the physical inspection of the merchandise is ordered, the Customs office shall notify the enterprise immediately to that effect, and shall designate the official responsible for carrying out the inspection. The competent official shall go to the premises of the enterprise and proceed to arrange the unloading of the merchandise from the transportation unit and the physical inspection. If the result of the physical inspection corresponds to the information declared to Customs, the official shall immediately authorize the release of the merchandise.

#### **Article 501. Discrepancies found in physical inspection**

If the result of the physical inspection identifies discrepancies between the information declared and the information which should have been declared, the official shall note this fact and report the matter to the Customs authorities. As part of the same procedure, the official may implement measures to secure the merchandise, where the discrepancies found relate to the quantity or nature of the merchandise actually unloaded. The Customs authorities shall make the required corrections and adjustments on the declaration, and shall initiate the appropriate administrative proceedings, notifying the party submitting the declaration accordingly.

## **SECTION III**

### **Clearance of merchandise to a destination abroad**

#### **Article 502. Receipt of declaration and verification inspection**

On receipt of the Customs declaration, arrangements shall be made for a physical inspection or the Customs release of the merchandise shall be authorized. The declaration must show the place where the merchandise is to be loaded on board the transportation unit or packed for transportation.

#### **Article 503. Clearance of merchandise without physical inspection**

In cases where it is not deemed necessary to carry out a physical inspection, the party submitting the declaration shall be notified of authorization of the Customs release of the merchandise. The party submitting the declaration shall be responsible for supervising the operation of the loading of the transportation unit or packing of the goods.

Where the merchandise is to be loaded in transportation unit for transit to a maritime port, the party submitting the declaration must place Customs seals on the transportation unit and advise the Customs supervising office of the date, exact departure time of the vehicle and transportation unit, and the identification details of the Customs seals placed on the consignment.

Where the merchandise has to be packed for transport to an airport, the party submitting the declaration must transmit to the Customs supervising office notification of the completion of the packing operation and the date and approximate time of departure of the merchandise by air.

#### Article 504. Performance of the physical inspection

If the physical inspection of the merchandise is ordered, the Customs office shall notify the enterprise immediately to that effect, and shall designate the official responsible for carrying out the inspection. The competent official shall go immediately to the premises of the enterprise or the place where the merchandise is being packaged and proceed with the physical inspection. If the result of the physical inspection corresponds to the declaration and other information provided, the official shall immediately authorize the release of the merchandise, and shall supervise its loading or packing and verify the placement and identification details of the Customs seal on the transportation unit. The party submitting the declaration shall proceed in accordance with the second and third paragraphs of the preceding Article.

#### Article 505. Discrepancies found in physical inspection

If the result of the physical inspection identifies discrepancies between the information declared and the information which should have been declared, the official shall note this fact and report the matter to the Customs authorities. As part of the same procedure, the official may implement measures to secure the merchandise, where the discrepancies found relate to the quantity or nature of the merchandise. The Customs authorities shall make the required corrections and adjustments on the declaration, and shall initiate the appropriate administrative proceedings, notifying the party submitting the declaration accordingly.

Discrepancies identified from the physical inspection shall not interrupt the clearance of the merchandise any more than required for the required sampling and testing procedures, in cases where there is evidence that a Customs offence may have been committed.

#### Article 506. Completion of the operation

The exit Customs office shall notify the Customs supervising office of the departure from Costa Rica of the transportation unit.

#### Article 507. Other operations under the regime

The procedures for the authorization of other operations of enterprises operating as inward processing regime beneficiaries shall be subject, as applicable, to the provisions of these Regulations and the Temporary Admission Regime Regulations, Executive Decree No. 22108-COMEX-H of 30 March 1993 and amendments thereto, in accordance with the relevant Customs regime.

**SECTION IV**  
**Registration and discharge of lien**

Article 508. Deadline for submission of certificate of registration of lien to the Customs supervising office

The party submitting the declaration must submit to the Customs supervising office, within one month from authorization of the Customs release of the merchandise, a certificate issued by the Register of Liens or a Notary Public confirming the registration of the deed of Customs lien covering the cleared merchandise.

The Customs lien shall be lodged in the form specified in the Temporary Admission Regime Regulations and amendments thereto.

Article 509. Discharge of the lien

On submission of the certificate confirming the merchandise exit declaration report, issued by the Customs supervising office, the party submitting the declaration shall be discharged with respect to the statutory lien on the merchandise; this will be a valid basis for making the relevant annotation in the Register of Liens.

## **REGULATIONS ON THE INWARD PROCESSING AND DUTY REFUND REGIMES**

DECREE NO. 26285-H-COMEX

THE PRESIDENT OF THE REPUBLIC AND THE MINISTERS OF  
FINANCE AND FOREIGN TRADE

under the powers conferred on them in Article 140(3) and (18) of the Political Constitution, Article 28(b) of the General Law on Public Administration, the Central American Uniform Customs Code II, General Customs Law No. 7557, Regulations No. 25270-H and the Income Tax Law, Law No. 7092,

### **WHEREAS**

1. Law No. 7092 of 21 April 1988 and amendments thereto, the "Income Tax Law" provides in Title V, Chapter XXVII for a series of incentives for businesses engaged in the export of non-traditional products;
2. the said Law also created the Temporary Admission Regime, whose fundamental principles and administrative aspects require regulation to ensure they are fully consistent with the promotion of exports;
3. the General Customs Law, Law No. 7557 of 20 October 1996, in Articles 179 ff. set down the basic rules for the Inward Processing Regime, also requiring regulation, and includes the Temporary Admission Regime, outlining the rights acquired by beneficiaries of that regime;
4. the General Customs Law, in Articles 190 and 191, also creates the Duty Refund Regime, and delegates authority to the Executive to make the requisite regulations;
5. the challenges of globalization call for legislation to boost the participation of the Costa Rica economy in world markets;
6. implementing regulations are required for the above legal provisions,

NOW THEREFORE

DECREE

the following:

## **REGULATIONS ON THE INWARD PROCESSING AND DUTY REFUND REGIMES**

### **TITLE I GENERAL PROVISIONS**

#### **Article 1. Scope**

These regulations lay down the required rules for the application of the INWARD PROCESSING REGIME, regulated by Articles 179 to 186 of the General Customs Law and



Articles 496 ff. of its implementing Regulations, and of the DUTY REFUND REGIME, as set down in Articles 190 and 191 of the General Customs Law.

## **CHAPTER I**

### **Abbreviations and Definitions**

#### **Article 2. Abbreviations**

For the purposes of these Regulations, abbreviations are used as follows:

Auxiliary: auxiliary Customs agent  
CAUCA II: Central American Uniform Customs Code II  
COMEX: Ministry of Foreign Trade  
Directorate: Directorate-General of Customs  
Management Unit: Operating Management Unit of PROCOMER  
Law: General Customs Law  
PROCOMER: Promotora del Comercio Exterior de Costa Rica  
Ministry: Ministry of Finance  
Regime: Inward Processing or Duty Refund Regime, as applicable.

#### **Article 3. Definitions**

For the purposes of these Regulations, the following definitions apply:

Accessories: devices or accessories fitted to equipment or machinery to assist or enhance production operations and used for the satisfactory operation of the machinery or equipment in which they are incorporated;

Customs supervising office: the Customs office which has territorial competence for the location where the central facilities of the regime beneficiary are situated and which has supervisory authority over the beneficiary;

Beneficiary: natural or legal person granted authorization to operate under the regime;

Assembly: combination of sub-assemblies and parts, which has a specific function within the product;

Packing, wrapping: items designed to facilitate the transport and protection of products, in containers or otherwise;

Assembly operation: the act of joining components (parts, sub-assemblies and assemblies) which when combined result in a product with characteristics different from its component parts;

Containers: items designed to contain products of any kind;

Commencement of Operations: processes of installation, production, re-export and/or sale of the Production output in the domestic market;

Machinery and Equipment: assets used to process or transform other products or services;

Procedure Manual: the set of internal rules laid down by PROCOMER and the Directorate;

Raw Materials: goods which are to be incorporated in the end product by means of a production process;

Domestic Market: "sales to the domestic market" refers to all sales made into Costa Rica territory or Central America;

Production Module: the set of operations carried out for the manufacture of a particular product, or for the maintenance, repair, fitting, reconstruction or assembly of merchandise;

Fitting: the process of joining parts together to form sub-assemblies;

Parts: a manufactured product which does not itself consist of other parts;

Scrap percentage: proportion by which inputs decrease from their initial quantity after undergoing or being used in a production process;

Reconstruction: the act of constructing (or making) a product again;

Repair: remedying deterioration in order to restore the satisfactory operation of the item in question;

Residue or waste: the quantity of merchandise left over from the production process;

Sub-assembly: the combination of parts resulting from being fitted together, or which form part of an assembly;

By-products: goods produced as ancillary outputs from the principal production process;

Residue tolerance: the tolerance of scrap, maximum percentage of scrap permitted; permitted margin or discrepancy in the quantity or weight and a product entering a production module as compared with the input quantity and weight of raw materials.

## **CHAPTER II**

### **Auxiliary Customs Agents**

#### **Article 4. Status of auxiliary customs agents**

Beneficiaries operating under the Inward Processing Regime shall have the status of auxiliary Customs agents, subject to prior authorization granted by the Directorate, for which purpose they must meet the requirements laid down in the Law and its implementing Regulations, and shall be subject to the liability regime specified by those provisions.

Failure by beneficiaries of the said regime to comply with their obligations as auxiliary Customs agents shall incur the penalties laid down in the Law and its implementing Regulations.

#### **Article 5. Tax liability of beneficiaries**

Regime beneficiaries shall be liable for any damage or loss affecting the merchandise entering under the regime, and shall still be obliged to pay the relevant taxes, except in the case of destruction of the merchandise by acts of God or force majeure, duly substantiated to the satisfaction of the Customs authority.

### **CHAPTER III**

#### **Applicable Procedures**

##### **Article 6. Submission of Customs declarations.**

Customs declarations for the clearance of merchandise covered by the regimes regulated by these Regulations must be submitted through a duly authorized Customs agent, following the procedures laid down in Articles 496 and 507 of the Regulations made under the Law.

Declarations may be submitted prior to the arrival of the vehicle, following the electronic transmission of the waybill.

### **TITLE II**

#### **Inward Processing Regime**

### **CHAPTER I**

#### **General Provisions**

##### **Article 7. Application for Regime authorization and documents required**

Any party wishing to join the regime, under either of the regime modalities available, must present its application to the Management Unit, on the form provided by the unit, which shall contain at least the following information, according to the regime modality being applied for.

1. General details of the potential beneficiary;
2. products and markets to which they are to be re-exported;
3. products to be sold on the domestic market;
4. list of the machinery, equipment and spare parts which will enter under either regime modality;
5. production process for each product to be re-exported or sold in the domestic market, including the input-product linkages (Production standards)
6. cost structure, for calculation of domestic content and value added;
7. for legal persons, up-to-date notarised certifying statement containing the date of and extract from the firm's entry in the Public Register, ID document and legal status certificate, name and address of the resident agent in cases where the legal representatives of the firm reside abroad, capital amount and structure, names of company members as per the shareholders' register. In the case of a company member which is itself a legal person, certification of its members is also required, and so on, down to the level of natural persons;
8. for natural persons, birth certificate, certified copy of ID certificate or residence certificate;
9. provision of affidavit on negotiations conducted abroad and copies of sales contracts for products to be exported;.
10. in the case of textile products, the authorization from the Textiles Quotas Office must be included.

##### **Article 8. Authorization procedure**

On submission of the application, the Management Unit shall verify compliance with all the requirements laid down and notify COMEX, to enable it to make a final ruling within one month as from the date of receipt of the application.

If some of the application requirements have not been met, the Management Unit shall grant the party concerned a period of ten business days to remedy the defects in question. If the defects have not been remedied by the end of that period, the management Unit shall reject the application.

The same procedure shall be followed on the submission of any further application relating to the regime, except in the cases referred to in Article 10 of these Regulations.

#### Article 9. Applicant to act as an Auxiliary Customs Agent

When COMEX has authorized operation under the regime, the beneficiary must take the required steps to register with the Directorate as an auxiliary Customs agent before commencing operations, in accordance with the procedure laid down in Articles 77 ff. of the Law and its implementing Regulations.

#### Article 10. Other authorization applications

The Management Unit shall process the types of application listed below directly, without any requirement for authorization from COMEX, except where exceptional or especially complex issues require the involvement of COMEX:

1. Application for inward Customs clearance of goods;
2. application for transfer of goods;
3. application for clearance of goods into national Customs territory;
4. application for destruction of goods;
5. application to extend markets;
6. application to buy locally;
8. application to modify Customs register entry;
9. application to extend foreign clientele;
10. application to change financial year;
11. application to donate assets;
12. application for extension of term of Customs liens which have not expired;
13. application to sub-contract services;
14. application to provide services;
15. application for machinery and equipment loans.

## **CHAPTER II**

### **Regime Modalities**

#### Article 11. Modalities

The Inward Processing regime has two modalities:

- A. One hundred per cent re-export: this modality is available to regime beneficiaries which export the whole of their production.
- B. Re-export and domestic sale modality: this modality is available to beneficiaries which re-export and/or sell their production on the domestic market, under terms and conditions previously authorized by COMEX.

## **CHAPTER III**

### **One Hundred Per Cent Re-Export Modality**

#### **Article 12. Intended purpose of Production output**

Enterprises operating under this modality may not sell their products on the domestic market or in Central America. The production plant must produce solely for re-export.

#### **Article 13. Scope of modality**

Merchandise permitted to enter under this modality shall be goods such as the following:

- A. Materials in their primary state;
- B. semi-manufactured products;
- C. finished products incorporated in other final items processed or assembled in Costa Rica;
- D. labels, tags and similar items added to the product for re-export;
- E. packaging, packaging material and wrapping;
- F. chemicals or other identifiable materials in the quantity and quality required for use in the process, even if they are used up or disappear without being incorporated into the end product, with the exception of fuel;
- G. machinery, equipment, parts, accessories and spare parts directly involved in the production process;
- H. moulds, dies, forms, tools and other devices used as additional devices for other items of apparatus;
- I. samples, models, patterns and similar items which are necessary for the production system and staff training.

#### **Article 14. Length of stay**

The permitted length of stay for merchandise entering under this regime shall be as follows:

- (a) Six months in the case of merchandise covered by the preceding Article, except for those under indents (g) and (h). This period may be extended by COMEX, on the basis of a prior application from the party concerned, on one occasional only, for the same period. All such applications must be submitted before the expiry of the original schedule;
- (b) five years in the case of the merchandise referred to in indents (g) and (h) of the preceding Article. This period shall be regarded as automatically extended for identical periods, without prejudice to any actions taken by the competent authorities of the regime in the event of failure to comply with regime requirements.

#### **Article 15. Expiry of period of permitted length of stay**

Expiry of the periods specified without the merchandise having been re-exported or definitively imported shall provide the basis for the Customs supervising office to act in accordance with the provisions of Article 36 of these Regulations.

## **CHAPTER IV**

### **Re-Export and Domestic Sale Modality**

#### **Article 16. Scope of the modality**

The following categories of merchandise may enter under this modality:

- A. Materials in their primary state;
- B. semi-manufactured products;
- C. finished products incorporated in other final items processed or assembled in Costa Rica;
- D. labels, tags, and similar items added to the product for re-export;
- E. packaging, packaging material and wrapping;
- F. chemicals or other identifiable materials in the quantity and quality required for use in the process, even if they are used up or disappear without being incorporated into the end product, with the exception of fuel;
- G. machinery, equipment, parts, accessories and spare parts directly involved in the production process;
- H. moulds, dies, forms, tools and other devices used as additional devices for other items of apparatus;
- I. samples, models, patterns and similar items which are necessary for the production system and staff training.

#### **Article 17. Permitted length of stay**

The permitted length of stay for merchandise entering under this regime shall be as laid down in Articles 14 and 15 of these Regulations.

#### **Article 18. Domestic sale**

For the sale of products in the domestic market and in Central America, beneficiaries under this modality must pay the full amount of taxes for the definitive import of the merchandise.

In addition, enterprises operating under this modality must pay, at the time of the inward Customs clearance of the machinery and equipment under the regime, the portion of tax corresponding to the ratio of the enterprise's sales on the domestic market to its total sales. For this purpose, PROCOMER shall notify the Customs Supervising Office of the percentage of sales made on the domestic market by the beneficiary, according to the details it provided in its regime application. This percentage shall be verified at least once a year by PROCOMER, on the basis of an official certificate to be provided by the beneficiary enterprise to the Operations Management Unit with the annual operating report. This is without prejudice to the Customs exercising its auditing powers under the law.

Failure to meet this requirement shall place the enterprise under the obligation to pay the whole of the tax for the machinery and equipment referred to in Article 16, G and H of these Regulations.

## CHAPTER V

### Obligations of Regime Beneficiaries

#### Article 19. Additional obligations

In addition to the obligations set down in Article 182 of the Law, the following obligations are also incumbent on regime beneficiaries:

1. To submit to the Management Unit, on the forms provided by PROCOMER, an annual report on the use and disposal of the merchandise, containing at least the following information:
  - (a) Overall movements, in terms of quantity, weight and value, of the merchandise admitted, balances in process, balances in stock, production re-exported or sold on the domestic market, broken down by country of destination;
  - (b) use or consumption of spare parts, accessories and similar, and balances in stock;
  - (c) movements of machinery and equipment.

The report must also be accompanied by the following documents:

- (a) Photocopy of the sworn income tax declaration, with appendices (financial statements and breakdowns);
- (b) in the case of enterprises, legal status certificate, registration extract, legal ID document, capital structure, names and nationalities of company members;
- (c) payroll figure report for the Costa Rica Social Security Fund for the least three months of the financial year in question.

This report must be submitted to the Management Unit within four months from the end of the authorized financial year, using the forms created by this office for that purpose;

2. to keep a satisfactory, up-to-date record of the operations carried out under the regime, according to the modality approved;
3. before the commencement of operations, to apply to the Directorate for authorization as an auxiliary Customs agent;
4. to keep merchandise which has been inward-cleared under the regime solely in the premises or plants approved for each beneficiary, which shall be regarded as a Customs operation zone;
5. to comply with labour provisions and employer's obligations to pay staff contributions;
6. to keep separate inventory records, using the FIFO method, along with all accounting and operating records, for merchandise entering the country, according to the intended purpose of the end product;

7. to comply with Customs legislation, these Regulations and other related rules applicable to the regime.

#### Article 20. Precautionary ex officio suspension

As a precautionary measure, COMEX shall suspend any beneficiary ex officio from Regime benefits if it has failed to obtain approval for its annual operating report within the said time-limit of four months.

Such suspension shall also be ordered if the Customs office notifies COMEX that the beneficiary has failed to lodge the Customs lien deed, duly entered in the Register of Liens, within the time-limit laid down in Article 34.

The Directorate and PROCOMER shall be notified immediately of the precautionary suspension, for the appropriate action; the suspension shall remain in place until the anomaly has been rectified. The preceding is without prejudice to the provisions of Article 42 of these Regulations.

## CHAPTER VI

### **Scrap, Residue, Waste and Residue Tolerance for Merchandise Entering under the Regime**

#### Article 21. Uniform percentage of scrap, residue, waste and residue tolerance

PROCOMER shall specify and authorize a uniform percentage for each module of production, for scrap, residue, waste and residue tolerance. That percentage, as duly authorized, shall provide a valid basis for the Customs supervising office to write down inventories with respect to merchandise inward-cleared into the regime; otherwise the Customs supervising office may not apply any reduction to the quantities and weights of merchandise entering.

To allow PROCOMER to adjust the percentages referred to in the preceding paragraph, six months after commencing operations the beneficiary shall submit to the Management Unit a record document issued by the appropriate engineer on the percentage of scrap, residue, waste and residual tolerance for his/her company.

The engineer must also submit an updated record document each year, along with the annual operating report.

#### Article 22. Change in percentages

In the event of changes in conditions and efficiency levels in the production structure of beneficiaries, these percentages may be changed, with prior approval from the Management Unit.

#### Article 23. Customs monitoring of approved percentages

If the Customs supervising office becomes aware of information indicating that the percentages approved are not in accordance with the situation in reality, it shall forward the relevant information to the Management Unit, which shall resolve the issue within 30 calendar days. If substantive doubts still remain, the Customs supervising office shall refer the matter to the Monitoring and Investigation Division of the Directorate, for it to action under its delegated powers.



## **CHAPTER VII**

### **Destruction and Donation of Merchandise Entering under the Regime**

#### **Article 24. Destruction of merchandise**

Residue or waste must be returned abroad, destroyed or donated, provided that the permitted length of stay for the material has not expired, in accordance with the procedure laid down for this purpose by the Directorate-General and PROCOMER.

The destruction of residue or waste and of any other merchandise entering under the regime shall take place subject to prior authorization from PROCOMER and the Customs Supervising Office.

When the destruction operation has been authorized, it shall be carried out in the presence of a representative of the beneficiary and a Customs official, who shall verify the deed drawn up for this purpose.

#### **Article 25. Donations of merchandise**

Beneficiaries may donate semi-manufactured merchandise, residue, waste, seconds, samples, spare parts and accessories and capital goods to the National Procurement Office of the Ministry, in accordance with the procedure laid down by the Directorate.

## **CHAPTER VIII**

### **Contracting, Sub-Contracting, Transfers and Loans of Machinery and Equipment Entering under the Regime**

#### **Article 26. Provision of services**

Regime beneficiaries whose total production is re-exported may use spare capacity of machinery and equipment to provide services to other enterprises operating under the Inward Processing Regime, one hundred per cent re-export modality, the Export Contract Regime or the Duty-Free Zone Regime, in each case under strict Customs supervision and with prior consent from PROCOMER.

#### **Article 27. Sub-contracting of services**

Regime beneficiaries shall also be authorized, subject to prior authorization from PROCOMER, to sub-contract production services from third parties, provided that the beneficiary is carrying out production operations and does not change into a business which is merely a trading enterprise.

#### **Article 28. Guarantee for sub-contracting arrangements**

A beneficiary wishing to enter into sub-contracting arrangements must submit a bond equivalent to the amount of the tax on the merchandise for which the sub-contracting arrangement is entered into, to be in the form of one of the types of guarantee laid down in Article 65 of the Law and Article 93 of the Regulations implementing the Law. The term of the sub-contracting arrangement may not exceed the period for which the beneficiary is permitted to keep the merchandise in Costa

Rica. The guarantee shall be lodged in favour of the Customs Supervising Office, and shall be returned when it is demonstrated to the satisfaction of Customs that the goods have re-entered the facilities of the beneficiary, or where applicable on their re-export.

The Customs Supervising Office shall enforce the guarantees directly, without any prior procedure, in the event of non-compliance with time-limits for re-export, or failure to carry out the definitive import of the merchandise. The preceding is without prejudice to any further actions to which the beneficiary may be subject.

#### Article 29. Transfer of merchandise

On the basis of a case presented by the beneficiary, the Management Unit may authorize a transfer of merchandise from one beneficiary to another. For this purpose, prior to the actual transfer, the beneficiaries must simultaneously cancel the entry Customs declaration and the relevant Customs lien and submit the new documentation on behalf of the party acquiring the merchandise. Failure to comply hereby shall entitle the Customs Supervising Office to enforce the Customs lien, in the manner set down in Article 38 of these Regulations.

#### Article 30. Loan of equipment

PROCOMER may authorize loans of equipment and machinery between Regime beneficiaries operating under the one hundred per cent re-export modality, for a fixed period, on the basis of an application. In addition to the supporting arguments, the application must set out the detailed characteristics of the equipment to be loaned, giving the brand, model, serial number and lien No. Liability for the equipment and machinery shall continue to be borne by the beneficiary which brought them into the regime, and the Customs Supervising Office may enforce the liens in question in the event of any instance of non-compliance with requirements.

The lending of equipment and machinery shall take place in accordance with the procedure laid down for this purpose by the Directorate and PROCOMER.

### **CHAPTER IX**

#### **Deed of Customs Lien**

#### Article 31. Issue of the Deed of Lien

For any declaration of entry of machinery and equipment into the regime, the corresponding deed of Customs lien must be issued and registered. In the case of raw materials, the beneficiary shall submit, on a six-monthly basis, an overall Customs lien, duly registered, for the value of taxes corresponding to all the raw materials entering the regime during the previous six months, or according to an estimate if operations have commenced in the six-month period in question. To this end, PROCOMER shall provide the Directorate with the information requested, in accordance with the information provided by the enterprises, without prejudice to the Customs officer's right to verify the said information against the contents of the Customs Information System.

#### Article 32. Requirements for the Deed of Customs Lien

The first-rank legal lien in favour of the revenue authorities over the machinery, equipment and raw materials entering under the regime, and any extensions, novations, partial or total cancellations or any other legal transaction relating to that deed must be recorded in writing, on pre-numbered forms duly authorized by the Directorate. The deed must also be free of any deletions, smudges or interlinear additions, and must be written in letters, without numbers or abbreviations, except where these form part of a mark or emblem.

Any error or omission must be rectified with a separate note. The text on the reverse of the document shall also be validated with the signature of the beneficiary, in accordance with point (12) of the following Article.

Article 33. Information to appear on the Deed of Lien

The deed of Customs Lien must contain at least the following information:

1. Surname and first names, ID document and residential address in the case of a natural person, or the trading name, name, legal ID document and domicile in the case of a legal person; this person shall be the debtor for all purposes;
2. amount in colons of the tax payable, which must be at least equal to the total amount of tax paid on the corresponding Customs declaration. In the case of raw materials, the amount shall be as specified in Article 31 of these Regulations;
3. the fact that the lien is given as a first-rank lien, showing the name of the Customs Supervising Office in favour of which the lien is given;
4. origin of the lien – this will be the importation of the merchandise under the regime, showing the number and date of the Customs declaration in question, in the case of machinery and equipment, and the period covered in the case of raw materials;
5. description, weight, CIF value, and exact quantity of the merchandise given as guarantee;
6. location where the merchandise is to be held, and who is responsible for its safe keeping;
7. location where the payment of the debt is to be made; this must be the same as the location of the Customs supervising office;
8. expiry date of the lien or extension, which must never exceed the period set down as the time for which the merchandise is to remain in Costa Rica;
9. the fact that on the expiry of the period set down as the time for which the merchandise is to remain in the country, without the merchandise having been re-exported or definitively imported, or if it is demonstrated that the enterprise has used the merchandise improperly or disposed of the merchandise otherwise than as authorized, the Customs Supervising Office shall initiate the procedure laid down in Articles 36 to 38 of these Regulations for collection of the debt. It shall also be stated that at the conclusion of that procedure, and after the period of 5 days set down in Article 61 of the Law, if voluntary payment has not been made the Customs Supervising Office will carry out the sale of the merchandise by public auction, in accordance with the provisions set down to this end;
10. the fact that entry in the Register of Liens of the Public Register is mandatory, and not subject to the payment of any tax, in accordance with Article 185 of the General Customs Law, Law No. 7557, published in la Gaceta No. 212 of 8 November 1995;
11. place and date of issue of the deed;

12. signature of the beneficiary or its legal representative, duly authenticated by an attorney-at-law, or failing that, signed by two witnesses present at the execution of the deed.

Article 34. Time-limit for the lodgement of the deed of Customs lien, duly registered

The beneficiary must give the Customs Supervising Office the original of the deed of Customs lien, duly entered in the Register of Liens of the Public Register, within a maximum period of one month from the date of acceptance of the relevant Customs declaration. If this requirement is not met, the Customs Supervising Office shall notify COMEX immediately to that effect, for action to be taken in accordance with the provisions of Article 20 of these Regulations.

Article 35. Release of the Customs lien in the Public Register

On the merchandise being re-exported or definitively imported within the deadlines laid down, upon application from the beneficiary the senior official of the Customs Supervising Office or person with delegated authority from that official shall forward the relevant communication to the Register of Liens of the Public Register, for cancellation or release of the lien in question.

Article 36. Expiry of the period for which the merchandise under lien is to remain in the country

Expiry of the period for which merchandise entering under the regime is to stay in the country without the merchandise having been re-exported or definitively imported shall place the beneficiary under the obligation to pay all taxes, fines, interest and other surcharges of any kind arising from its import.

The same obligation shall apply to beneficiaries which have made improper use of merchandise covered by the regime or disposed of it otherwise than as authorized, without prejudice to any other penalties which may be applicable.

Article 37. Procedure for collection of the debt

In any of the situations referred to in the preceding Article, the Customs Supervising Office shall act to collect the debt, following the procedure set down in Article 196 of the Law.

On the issuing of the final order requiring payment of the debt, the beneficiary shall have a period of five business days, in accordance with Article 61 of the Law, as from the relevant notification, to settle its debt with the Revenue authorities.

Article 38. Enforcement of deeds of Customs lien

On the expiry of the period of five days laid down in the preceding Article without the beneficiary having settled the debt, the Customs authority shall act immediately to enforce the Customs lien by auctioning the merchandise given under lien, with the base price for the sale being the amount of the debt plus interest, fines and other charges applicable.

The procedure for carrying out the auction shall be that laid down by the General Customs Law and its implementing Regulations.

If a balance outstanding remains after the merchandise has been sold, the Customs supervising office shall notify the Directorate accordingly, for initiation of the required collection actions.

Article 39. Preventive measures

In any of the situations referred to in Article 36 of these Regulations, and prior to the initiation of the procedure referred to in Article 37, the Customs Supervising Office, acting in collaboration with PROCOMER, may carry out, as a preventive measure, the arrest or seizure of the merchandise, and transfer it to an enclosure under Customs supervision, or carry out any other reasonable measure to ensure its safe keeping and custody.

**CHAPTER X**  
**PENALTIES APPLICABLE TO REGIME BENEFICIARIES**

**SECTION I**  
**PENALTY FINES**

Article 40. Fines imposed on Regime beneficiaries

In accordance with the provisions of the Law, the Directorate shall impose penalty fines on regime beneficiaries in the following cases:

1. Failure to identify the machinery, equipment and spare parts in accordance with instructions issued by the Directorate: fine of one hundred Central American pesos;
2. failure to re-export the merchandise or to do so within the legal time-limit, without prejudice to any other actions which may be taken under the Law: imposition of a fine of five hundred Central American pesos;
3. allowing merchandise in its keeping to become damaged, mislaid or lost: imposition of a fine of five hundred Central American pesos.

**SECTION II**  
**SUSPENSION PENALTY**

Article 41. Suspensions

In accordance with the Law, the Directorate shall act to suspend a beneficiary's standing with the Customs office if it is guilty of any of the following breaches:

1. Failure to allow the Customs office access to its facilities, production areas, warehouses or records of production costs: suspension of five days;
2. non-compliance with the obligation to keep merchandise only in duly approved or authorized premises: suspension of five days;
3. if it destroys merchandise with neither supervision by nor authorization from the Customs office: suspension of five days;
4. failure to keep information for a period of five years: suspension of one month;
5. non-compliance with a requirement incumbent on auxiliary Customs agents for more than three months, without good cause: suspension of one year;

6. failure to keep records of its actions in the manner set down by the Customs office, failure to make register entries or to do so within the specified deadline, destruction of records or failure to make records available: suspension of one year;
7. failure to maintain or failure to send records and reports on its operations or on the merchandise imported, re-imported or re-exported, or failure to do so on the required media or forms: suspension of one year.

### **SECTION III CANCELLATION OF REGIME**

#### **Article 42. Cancellation**

COMEX shall act to cancel regime status where the beneficiary has committed any of the following breaches:

1. Failure to commence operations within the time-limit set down in Article 182(a) of the Law;
2. after having commenced operations under the regime, discontinuation thereof for a period of more than four months without showing proper grounds;
3. beneficiary suddenly ceasing its operations, leading to labour problems or other impacts on law and order;
4. beneficiary making improper use of machinery, equipment and raw materials of any kind which has entered under the regime, or disposing of it in some way other than that specified, without prejudice to the implementation of any other measures applicable;
5. if the beneficiary has been suspended on two or more occasions within a period of 12 months;
6. if the report pursuant to Article 19(1) of these Regulations has not been submitted within 6 months of the end of the authorized financial year.

To this end, the Management Unit, on becoming aware of the situation, shall gather the required information, investigate the matter, and forward a recommendation to COMEX for initiation of the relevant administrative procedure.

#### **Article 43. Relinquishment of the Regime**

If the beneficiary decides to relinquish regime status, it shall submit an application to that effect to the Operating Management Unit, accompanied by the following documentation:

- List of the entry declarations, permits and deeds pending settlement or inventory;
- statement certifying there are no tax debts outstanding; and
- statement certifying there are no debts outstanding for employer's contributions.

The Operating Management Unit shall order the publication of a decree in La Gaceta on three consecutive days, for the hearing of any objections from third parties within 15 calendar days of the last day of publication.

On expiry of that period, COMEX, acting on the basis of a report drawn up by the Operating Management Unit of PROCOMER, shall issue a resolution cancelling the authorization of the enterprise for production programmes, and shall set a deadline for the enterprise to return, clear into national Customs territory, donate to the State or hand over to the Customs authority merchandise which has entered on a temporary basis, and to complete the required settlements, with notification to the Customs authorities accordingly.

### **TITLE III DUTY REFUND REGIME**

#### **CHAPTER XI GENERAL PROVISIONS**

Article 44. The concept of "inputs"

For the purposes of this Regime, the term "input" refers to merchandise which fulfils an ancillary function with respect to the packaging or packing of export products, used for activities such as labelling, sealing or gluing.

Article 45. Scope of the Regime

In accordance with Article 190 of the Law, The Customs Supervising Office shall authorize the refund of tax actually paid for the definitive importation of packaging, packing and inputs incorporated in export products, provided that these items have not undergone any process of transformation, processing, mixing or other process governed by Article 179 of the Law such as to modify their nature, or where they are used for the commercial transport of merchandise pursuant to Article 166(d) of the Law.

Machinery and equipment shall not be regarded as covered by this regime, even if used for the packaging or packing of export products.

Amounts paid as fines and interest arising from definitive imports shall not be regarded as covered by the regime.

The maximum deadline for requesting the refund shall be twelve months as from receipt of the relevant import declaration.

#### **CHAPTER II APPLICATION AND AUTHORIZATION PROCEDURE**

Article 46. Authorization requirements

An exporter wishing to operate under this regime must meet the following requirements:

1. It must not be a beneficiary of any other export tariff incentives;
2. it must be up-to-date with payment of its tax obligations and fines and other charges.

A beneficiary which has been authorized and subsequently fails to comply with the above requirements shall not receive the regime incentives until such time as it remedies such non-compliance.

#### Article 47. Application for Regime authorization

Any party wishing to gain Regime status must submit its application to the Directorate; the application must contain at least the following details:

1. Name, trading name and other general identification details of the potential beneficiary;
2. exact location of the applicant's facilities and head office;
3. name and status of its legal representatives;
4. general details of the enterprise, such as production levels, sales, commercial relationships, export volumes and sales breakdown by market and trading level (retailer, wholesaler);
5. explicit description of the procedure chosen for the refund operation, in accordance with current rules.

#### Article 48. Accompanying documents required with the application

The application must be accompanied by the following documents:

1. For legal persons, up-to-date certificate of legal status and certified copy of legal ID documents for the enterprise and its legal representatives;
2. for natural persons, certified photocopy of ID document or residence document;.
3. certificate from the competent authorities confirming that the party is up-to-date with payment of all tax obligations;
4. certificate from a suitable professional including the following:
  - (a) List detailing the production activities carried out by the enterprise and the processes required to perform them,
  - (b) list of the types of input used and the proportions in which each is incorporated in the export product;
5. affidavit taken before a Notary Public, duly placed on record, stating that the applicant does not receive any other export tariff incentive;
6. document recording the Customs agent's consent for use of its current account for refunds to the beneficiary, in cases where this refund procedure is chosen.



Article 49. Authorization procedure

On submission of the application, the Directorate shall verify compliance with the requirements laid down in these Regulations, and issue the authorization or rejection document, as applicable, within a period of one month from receipt of the application.

If the application as submitted does not meet all the requirements, as set out in Articles 264 and 287 of the General Public Administration Law, a period of ten business days shall be granted for the defects to be remedied.

### **CHAPTER III OBLIGATIONS**

Article 50. Obligations of Beneficiaries

The beneficiaries of this Regime must comply with the following obligations:

1. To provide the Directorate with an annual update in January of each year on their tax situation, with confirmation that they are not receiving any other export tariff incentives;
2. to have a system of up-to-date Financial and Cost Accounting records, allowing calculation of the input-product ratio;
3. to comply with any other obligation laid down by the Directorate in the authorization document or any other instructions of a general nature.

### **CHAPTER IV REFUND PROCEDURE**

Article 51. Competent Authority for refunds

The application for a refund of the tax paid for the definitive import of the packaging, packing and inputs incorporated in export products under this regime may be submitted only by the regime beneficiary, to the Customs supervising office, which shall be the competent office for carrying out such refunds where applicable.

No other Customs entity other than the Customs supervising office may refund tax under this regime, even where the definitive import of the packaging, packing or inputs being exported was cleared into national Customs territory under the jurisdiction of the entity in question, i.e. the Customs entity from which it applies for the definitive export of the end products.

Article 52. Procedures for the refund of tax

For the refund of tax actually paid, the applicant may choose either of the following procedures:

1. Refund via the current account of a Customs agent, in which case the following shall apply: the provisions of Articles 256 ff. of the Regulations implementing the Law. In this case, it must submit a document showing that the Customs agent consents to the use of its current account for this purpose;

2. by Government Invoice, in accordance with current rules.

#### Article 53. Choice of Refund Procedure

In its authorization application, the beneficiary must explicitly state which of the above procedures it will choose for payment of the appropriate tax refunds by the Customs Supervising Office.

If the beneficiary at any time wishes to change the refund procedure or the Customs agent to whose account the refunds are credited, it must apply to the Directorate accordingly, which shall authorize the change and notify the Customs Supervising Office for implementation of the required measures.

#### Article 54. Monitoring of refunds

The Customs Supervising Office shall specify the measures to be implemented to ensure that refunds payable under this regime are paid once only for each definitive importation Customs declaration, but without prejudice to partial payments.

### **CHAPTER XII ENTRY INTO FORCE AND REPEALED PROVISIONS**

#### Article 55. Repealed provisions

These Regulations repeal the Temporary Admission Regulations, Executive Decree No. 22108-COMEX-H of 30 March 1993 and amendments thereto, Articles 508 and 509 of the Regulations implementing the General Customs Law, and any other provisions of equal or lesser rank contrary to these Regulations.

#### Article 56. Entry into force

These Regulations shall enter into force on their publication.

#### TRANSITIONAL PROVISIONS

I. Natural or legal persons authorized under the temporary admission regime shall automatically be regarded as beneficiaries of the Inward Processing Regime for the one hundred per cent re-export modality, unless they submit the relevant application, meeting the stated requirements, to COMEX, to obtain authorization for the "re-export and domestic sale" modality.

In that case, the tax for the machinery and equipment acquired under the temporary admission regime must be paid prior to authorization of the change of modality, in accordance with the provisions of Article 18 of these Regulations.

II. While the Directorate is in the process of approving the new Entry and Exit declaration forms for merchandise under the Inward Processing Regime, the current forms shall remain in use.

III. Beneficiaries shall have a period of three months, from the issuing by the Directorate of the new form for the deed of Customs lien, to carry out the replacement and entry in the Register of Liens of the Public Register of the liens on merchandise which has already entered, under the temporary admission regime.

IV. Regime beneficiaries shall be granted a period of 2 months to comply fully with the new rules laid down in these Regulations.

Given at the Presidency of the Republic, San José, on the nineteenth day of August, nineteen hundred and ninety-seven. FOR PUBLICATION.

JOSE MARIA FIGUERES OLSEN  
President

Minister of Foreign Trade  
JOSE MANUEL SALAZAR XIRINACHS

Minister of Finance  
FRANCISO DE PAULA GUTIERREZ

(Modified by Decree 29055 of 30 October 2000)

**AMENDMENTS TO ARTICLES 4, 20, AND 21 OF THE DUTY-FREE ZONE LAW  
AND ADDITION OF TRANSITIONAL CLAUSE IV, LAW NO. 7210**

**NO. 7467**

**THE LEGISLATIVE ASSEMBLY OF COSTA RICA HEREBY**

**DECREES THE FOLLOWING:**

**AMENDMENTS TO ARTICLES 4, 20 AND 21 AND ADDITION  
OF TRANSITIONAL CLAUSE IV IN THE  
DUTY-FREE ZONE REGIME LAW,  
LAW NO. 7210**

**ARTICLE 1. Amendments**

Article 4(c), Article 20(k) and Article 21(a) of the Duty-Free Zone Regime Law, Law No. 7210 of 23 November 1990, are hereby amended to read as follows:

"Article 4.

...

- (c) to organize, by a competitive bidding process, the concession for the administration of the duty-free zones to be created in Costa Rica. When the concession is withdrawn, the Corporation may temporarily perform the role of administrator of the duty-free zones subject to concession in a direct capacity."

"Article 20.

...

- (k) enterprises based in duty-free zones located in "relatively less developed" areas and communities according to the classification applied by the Ministry of Foreign Trade, subject to a report from the Ministry of National Planning and Economic Policy, shall be entitled to receive a credit equal to fifteen per cent (15 per cent) of the amount paid as wages and salaries during the previous year, in accordance with the certificate of payroll figures reported to the Costa Rica Social Welfare Fund. Enterprises wishing to operate under as beneficiaries under this Law must apply by no later than 31 December 1999. The entitlement shall last for five years; for the first four years it shall decrease by two percentage points per year, and it shall terminate in the last year. This credit shall be charged against the National Budget, and shall be in the form of registered negotiable securities.

For the practical implementation of this entitlement, the Executive shall include an annual budget item of forty million colons (¢ 40,000,000) for the first year of performance; this amount shall be adjusted each year by the percentage increase in the total payroll amounts of the enterprises qualifying for this credit in the previous year.

If the annual amount of this item is exhausted, the applications not met may be granted the entitlement in the following year.

The way in which the credit hereby established is issued and the conditions attaching thereto shall be laid down in the Regulations implementing this Law."

"Article 21.

...

- (a) training assistance, coordinated by the National Training Centre (INA), for employees and would-be employees of enterprises based in duty-free zones. Enterprises located in duty-free zones in 'relatively less developed' regions are eligible for the benefits of the national job creation programme of the Ministry of Labour and Social Security, for training and job placements for unemployed and underemployed persons and low-income earners in its region, as laid down in regulations to be drawn up jointly by the Ministry of Foreign Trade and the Ministry of Labour and Social Security.

The Ministry of Labour and Social Security and the enterprise shall sign an agreement, which must be in accordance with the following:

1. The instruction, training or retraining shall be for a period of three months, renewable for one further period where justified by the complexity or intensive nature of the process, at the discretion of the Ministry of Labour and Social Security, following submission of a report from the Ministry of Foreign Trade.
2. The training shall be arranged by the beneficiary enterprise, which shall provide the trainee with the plant, machinery and equipment required for his or her training. The courses shall be supervised by the National Training Centre, in accordance with guidelines to be laid down in the relevant agreement.
3. The Ministry of Labour and Social Security shall grant the trainee a monthly allowance, charged to the Programme fund, for the whole of the training period. The amount of the allowance shall be equal to the minimum monthly wage. Since this is a technical training incentive, the payment shall not create any employment relationship or give rise to any other legal consequences.
4. The enterprise shall be obliged to employ the trainee, on completion of the course of instruction or training, subject to the trainee's suitability in accordance with the criteria laid down in the relevant agreement."

#### ARTICLE 2. Addition

A Transitional Clause IV shall be added to Law No. 7210, of 23 November 1990, reading as follows:

"TRANSITIONAL CLAUSE IV.- The Ministry of Labour and Social Security is authorized to perform obligations contracted prior to the entry into force of this Law with enterprises located in 'relatively less developed' regions on the basis of application of the national job creation programme, at the expense of the Programme fund."

ARTICLE 3. Entry into force. This decree shall come into force on its publication.

SECOND PLENARY LEGISLATIVE COMMISSION.—The preceding draft was approved on 30 November 1994.

Antonio Alvarez Desanli, Chairman.--Gerardo Humberto Fuentes González, Secretary.

For communication to the Executive.

LEGISLATIVE ASSEMBLY. --San José, on the thirteenth day of December, nineteen hundred and ninety-four.

Alberto F. Cañas, Chairman.--Juan Luis Jiménez Succar, First Secretary.--Mario A. Alvarez G., Second Secretary.

Given in the Presidency of the Republic.--San José, on the twentieth day of December nineteen hundred and ninety-four.

To be implemented and published.

JOSE MARIA FIGURES OLSEN.—the Minister of the Economy, Industry and Commerce, Marco A. Vargas D., and the Minister of Foreign Trade, José Rossi Umaña.—(one)--C- 100.--(59647).

**TAX PROCEEDINGS LAW, AMENDMENTS TO THE CODE OF TAX RULES AND  
PROCEDURES,  
LAW NO. 4755, OF 3 MAY 1971 AND AMENDMENTS THERETO**

**NO. 7535**

**THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF COSTA RICA,**

**HEREBY DECREES THE FOLLOWING:**

**TAX PROCEEDINGS LAW, AMENDMENTS TO THE CODE OF TAX RULES AND  
PROCEDURES,  
LAW NO. 4755, OF 3 MAY 1971 AND AMENDMENTS THERETO**

Article 1. Articles 22, 39, 40, 43, 50, 51, 53, 57, 59, 60 and 65 to 98 of the Code of Tax Rules and Procedures are hereby amended to read as follows:

"Article 22. Liability for acquisition. The following are jointly and severally liable as acquiring parties:

- (a) The grantees and legatees, for the tax payable on the taxable operation;
- (b) parties acquiring commercial establishments and other successors to assets, liabilities or both, enterprises or group entities, with or without legal personality. For these purposes, the members or shareholders of liquidated firms shall also be regarded as successors. This liability shall not be invoked if the conveyance document includes a statement by the Tax Administration to the effect that the transferor or firm in liquidation has no tax obligations outstanding."

"Article 39. Place, date and manner of payment. Payment must be made at the place, on the date and in the manner laid down in the Law, or in their absence its implementing Regulations. The Tax Administration shall be obliged to accept partial payments."

"Article 40. Time-limit for payment. Within the time-limits set by the relevant laws, the tax must be paid in accordance with sworn declarations submitted by the tax-payer or manager, or on the basis of any other kind of payment arrangement made by the tax-payer or manager, or payment in the form of partial payments or withheld amounts. In cases where the Tax Law does not set a deadline for payment of the tax, it must be paid within 15 calendar days of the date of occurrence of the event giving rise to the tax payment obligation.

All other payments as tax arising from decisions issued by the Tax Administration in accordance with Article 146 of this Code must be made within 30 days of the date on which the liable party was legally notified thereof.

Interest and surcharges shall be calculated from the date on which the tax should have been paid in accordance with the relevant laws or this Code, in the following situations:

- (a) Where the tax obligation is directly linked to actions incurring criminal tax penalties; this requirement shall be assessed in accordance with the provisions of Article 81 of this Code;
- (b) where the liable party is characterised as a vexatious litigant by the Administrative Tribunal on Tax Issues. The party shall be regarded as a vexatious litigant if he/she

proceeds with the clear intention of delaying the final assessment of the tax obligation, without any reasonable grounds for bringing a legal action."

"Article 43. Overpayments and prescription on repeat actions. Tax-payers or managers to whom amounts are owed on the basis of overpayments of tax, interest, surcharges and fines must be notified of this fact by the Tax Administration, within three months of the date of the payments giving rise to the credit. Failing such notification, the creditor shall be entitled to interest equivalent to that specified in Article 57 of this Code. This interest shall run from the day following the expiry of the above time-limit.

Liable parties or managers may apply in writing to the Tax Administration for a refund of the amounts of overpayments of tax, interest, surcharges or fines, or may apply for a tax credit for the amount in question.

Action to seek such a refund is subject to prescription at the end of four years after the day following the date on which each payment was made, or the date of submission of the sworn declaration giving rise to the credit."

"Article 50. Procedures. The obligation to pay tax may be cancelled or remitted only by a law promulgated with general effect. Ancillary obligations, such as interest, surcharges and fines, may only be remitted by an administrative decision, issued in the manner and under the conditions set down in the Law."

"Article 51. Prescription periods. Action by the Tax Administration to assess the obligation is subject to prescription after four years. The same prescription period shall apply for demanding payment of the tax and interest thereon."

"Article 53. Interruption of prescription period. The prescription period shall be interrupted by the following:

- (a) Notification of decision containing comments and obligations payable or subsequent procedural acts by the Tax Administration for assessment of the tax.

Similarly, the period shall be interrupted by a tax assessment carried out by the liable party. The interruption date shall be taken as the date of notification of the administrative decision containing comments and obligations payable, or the late submission of the relevant sworn declaration;

- (b) any adjustment application from the liable party;
- (c) express acknowledgement of the obligation on the part of the debtor;
- (d) request for extension or other payment terms;
- (e) service of administrative or Court documents with a view to enforcing collection of the debt;
- (f) lodgement of any petition or claim as referred to in Article 102 of this Code.

Once the prescription period is interrupted, the time elapsed to date shall be disregarded, and the period shall start to run again in full, as from 1 January of the calendar year following the year in which the interruption occurred."



"Article 57. Interest payable by the liable party. Without the need for any kind of action by the Tax Administration, late payment shall give rise to the obligation to pay interest in addition to the tax owed; that interest shall never be less than the base rate on deposits set by Banco Central de Costa Rica.

The Tax Administration shall set the interest rate by a published decision; the rate shall not exceed the said base rate for deposits by more than fifteen points, and shall apply as from the date of publication.

No remittance shall be granted on the payment of such interest, except where an error on the part of the Administration is demonstrated."

"Article 59. General charge. Debts receivable as tax, interest, surcharges and monetary penalties shall be covered by a general charge on all the assets and income of the liable party; even in the case of insolvency, bankruptcy or liquidation, those debts shall rank higher than other debts receivable, with the following exceptions:

- (a) those guaranteed by in rem rights, provided that the guarantee was lodged prior to the event giving rise to the tax obligation providing the basis for the tax debt receivable;
- (b) alimony, notice of termination, termination, wages and salaries, social security contributions and other labour entitlements."

"Article 60. Special charge. In the case of tax debts receivable subject to a special charge on specific assets, the relevant provisions of the Commercial Code, Civil Code and Code of Civil Procedure shall be applied."

Article 2. Title III of the Code of Tax Rules and Procedures is hereby replaced with a new Title, reading as follows:

### "TITLE III. TAX OFFENCES

#### CHAPTER I. GENERAL PROVISIONS

Common provisions applicable to all tax offences

"Article 65. Classification. Tax offences shall be classified into the following categories: administrative breaches, minor tax offences and tax crimes.

Minor tax offences and tax crimes shall be dealt with by the Courts, through the municipal magistrate's courts dealing with minor tax offences (*Alcaldías de Contravenciones Tributarias*), the Tax-related Criminal Offences Agency (*Agencia Fiscal Penal Tributaria*), the Criminal Court for the Investigation of Tax Offences (*Juzgado de Instrucción Penal Tributario*) and the Higher Criminal Court for Tax Offences (*Tribunal Superior Penal Tributario*), which shall have jurisdiction in the whole of the national territory.

The Higher Criminal Court for Tax Offences shall hear cases of tax crimes, whether brought by direct summons or by formal proceedings."

"Article 66. Proof of the commission of tax offences. The process of proving the commission of tax offences must respect the principle "non bis in idem", i.e. not being punished twice for the same offence, in accordance with the following rules:

- (a) a penalty imposed by the Court shall preclude the imposition of an administrative penalty for the same actions;
- (b) if the Tax Administration has already imposed a penalty, this shall not stop a Court action being brought and conducted. However, if this results in a conviction against the party concerned, any breaches which may be regarded as preparatory to the commission of the crime, or actions or omissions included in the offence, shall be regarded as subsumed in the crime. Accordingly, the administration penalties imposed must be revoked and, if their nature permits, offset against the performance of the penalty imposed by the Courts."

"Article 67. Liability of legal persons

Legal persons and the other entities referred to in Article 17 (b) and (c) of this Code may not be held criminally liable. They shall however be held jointly and severally liable under civil law for actions or omissions committed by their representatives in the performance of their functions."

"Article 68. Liability of representatives. Representatives, persons holding powers of attorney, directors, agents, officials or employees of a legal person shall be personally liable for the actions and omissions specified in this Law. Such liability shall not be presumed, and accordingly must be duly proven."

"Article 69. Subjective element of tax offences. Tax offences shall be punishable only if performed with fraud or culpability, including merely by negligence of the duty of due care to be exercised in the performance of tax obligations and commitments."

"Article 70. Concept of "basic wage". The term "basic wage" as used in this Law shall be understood as defined in Article 2 of Law No. 7337."

"Article 71. Concept of "Tax Administration". For the purposes of this Title III, the term 'Tax Administration' shall be understood as referring to the Tax Administration institutions attached to the Ministry of Finance."

## CHAPTER II. ADMINISTRATIVE PENALTIES

### FIRST SECTION. General provisions

"Article 72. Administrative measures. The Tax Administration shall impose the administrative measures laid down in the law: fines and closure of business activity, imposed on the liable party. The application of these penalties is separate from the payment of interest as specified in Article 57 of this Code."

"Article 73. Plurality of breaches. Where one action involves more than one breach, the most severe penalty shall be applied."

"Article 74. Prescription period. The right to apply penalties shall be subject to prescription after four years, counted as from the date on which the breach was committed. Prescription of an action for the application of penalties shall be interrupted by notification regarding the presumed breaches, or by an accusation brought before the Public Prosecutor."

"Article 75. Additional rules to be applied. The Tax Administration must impose the penalties laid down in this Chapter on the basis of the principles of legality and due process."

As regards the procedures to be followed, in the absence of an express rule laid down in this Code, the general provisions on administrative procedure laid down in the General Public Administration Law shall be applied."

"Article 76. Default. Any party failing to pay tax debts by the deadlines laid down in the relevant legislation is in default, unless an extension has been granted in accordance with Article 38 of this Code.

Cases of default shall incur a surcharge of one per cent (1 per cent) per month or part thereof from the point in time when the obligation should have been met up to the actual payment of the tax, and shall be calculated on the sum totals not paid on time. The lodgement of an application for payment terms, duly granted by the Tax Administration, shall interrupt the time elapsed used to calculate the surcharge payable.

In cases where the default refers to amounts not paid to the Revenue authorities by withholding agents or collectors, the surcharge shall be three per cent (3 per cent) per month of the amount retained. This surcharge shall be applied irrespective of payment of interest as laid down in Article 57 of this code and in accordance with Article 40 of this Code."

## SECOND SECTION Administrative breaches

"Article 77. Fine of one basic wage. A fine of one basic wage shall be incurred by any party committing the following breaches:

- (a) Failure to appear at the offices of the Tax Administration when the party's presence is required, in accordance with Article 11 2 of this Code;
- (b) failure to keep accounting records and supporting documents at the tax domicile location or location authorised by the Tax Administration;
- (c) failure to allow the inspection of premises occupied in any capacity by the Administration client where a search warrant has been issued authorising the Administration to carry out such inspection."

"Article 78. Fine of three basic wages. A fine of three times the basic wage shall be incurred by any party committing the following breaches:

- (a) Failure to register assets for which registration is mandatory;
- (b) failure to notify the Tax Administration of a change of tax domicile."

"Article 79. Fine of six basic wages. A fine of six times the basic wage shall be incurred by any party committing the following breaches:

- (a) Falling over three months behind with keeping the books or accounting records referred to in Article 104 of this Code;
- (b) failure to submit tax declarations within the legal deadline;
- (c) failure to make notification, or late notification of the commencement of an activity or performance of an action giving rise to obligations;
- (d) failure to comply with its obligation to withhold and collect taxes."

## **CHAPTER III. CRIMINAL PENALTIES**

### **SECTION I. General provisions**

"Article 80. Applicable principles and rules. The provisions of this Code shall apply to minor tax offences and tax crimes, to be referred to the municipal magistrate's courts dealing with minor tax offences and the criminal courts dealing with tax offences by the procedure set down in the Code of Criminal Procedure. They shall also be subject to the general provisions contained in the Criminal Code.

Any special provisions in tax laws shall take precedence over general provisions."

"Article 81. Procedure for the application of criminal sanctions for tax offences. The following procedure shall be observed for the application of criminal penalties for tax offences:

- (a) If in the performance of its auditing work the Tax Administration detects actions which in its view constitute minor tax offences or tax crimes committed by parties subject to tax obligations, it must issue an official demand, by administrative decision served in person, advising that the party is required, within a time-limit of up to twenty business days following the notification date, to comply with its official duties or, if applicable, to pay the tax, surcharges, interest and fines directly connected to the commission of actions constituting a tax crime or minor offence;
- (b) principal or ancillary tax obligations not directly connected to actions incurring criminal penalties for tax offences shall be assessed according to the procedure laid down as from Article 144 in this Code, including access to the Administrative Disputes Jurisdiction;
- (c) the time-limit for the compliance demand shall run from the entry into force of the decision of the Director General of Tax, or where applicable the Administrative Tribunal on Tax Issues, if the decision is appealed within five business days. The Tribunal must issue its decision within a period of one month;
- (d) on expiry of the compliance notice deadline, if the party concerned has still not complied with the order given in the administrative decision the Tax Administration shall send the administrative dossier to the Public Prosecutor, for initiation of the appropriate criminal action.

No minor offence or crime shall have been committed if, within the aforesaid compliance notice time-limit, the liable party pays the tax, surcharges, interest or fines, or, where applicable, complies with its official duties as demanded in the administrative decision making the compliance demand."

"Article 82. Assessment of the amount of tax obligations. In the judgment, the Criminal Tax Magistrate shall rule on the imposition on the defendant of the criminal penalties for tax offences. If a conviction is handed down, and where applicable, the Magistrate shall assess the amount of principal and ancillary tax obligations directly connected to the actions incurring criminal penalties for tax offences. The amount so assessed may not exceed the assessment amount included in the administrative decision confirmed by an administrative ruling."

"Article 83. Classification of penalties. Minor tax offences shall be punishable as follows, according to the case:

- (a) By imposition of a fine, which shall always be regarded as the principal penalty;
- (b) ancillary penalties, as follows:
  - (i) loss of entitlement to obtain public-sector subsidies and receive tax benefits and incentives for a period of up to three years;
  - (ii) prohibition from executing contracts with the Public Administration, for a period of up to three years;
  - (iii) disqualification from professional practice, for a period of up to three years for parties required by law to cooperate with the assessment or collection of tax, provided that the conduct in breach related to performance of its function or profession.
  - (iv) dismissal from public office.

The ancillary penalties laid down in indents (i) and (ii) shall apply to both the physical person in breach and any legal person which has benefited from the breach."

"Article 84. Criteria of level of offending. In determining the appropriate penalty, the Magistrate shall consider not only the magnitude of the fiscal loss caused, the characteristics of the tax offence committed and the behaviour of the liable party, but also the criteria of level of offending set down in Section VII of Title IV of the First Book of the Criminal Code. The judge shall also apply the ancillary penalties laid down in this Law according to the attenuating and aggravating circumstances of the offence."

"Article 85. Prescription rules. Criminal prosecutions are subject to prescription after four years, reckoned from the point in time of the commission of the offence. Filing of an appeal as specified in Article 81 (c) of this Code shall interrupt the prescription period."

"Article 86. General rule of type classification. The types of minor offence described require the existence of specific obligations and the tax duties set down in this Code or other laws.

The penalties laid down in the following Section for minor offences shall not apply where there is a more severe penalty."

## **SECTION II**

### **Minor tax offences**

"Article 87. Fine of four to ten times the unpaid tax or benefit gained

A fine of four to ten times the amount of the unpaid tax or benefit gained shall be incurred by any party committing the following actions and omissions:

- (a) Enjoyment or obtaining of tax benefits, exemptions or refunds to which the party was not entitled;
- (b) determination and substantiation of income, expenditure or deductions which are incorrect."

"Article 88. Fine of eight to twenty times the basic wage. A fine of eight to twenty times the basic wage shall be incurred by any party committing the following actions and omissions:

- (a) keeping more than one set of account books, record systems or accounting records;
- (b) alteration or falsification of documents or deliberate use of altered or false documents as evidence in support of its accounting records."

"Article 89. Fine of five to twelve times the basic wage. A fine of five to twelve times the basic wage shall be incurred by any party committing the following actions and omissions:

- (a) Incorrect recording or omission of one or more operations from the accounting records and records required under tax rules;
- (b) incorrect transcription in tax declarations of information from the books and mandatory records;
- (c) non-compliance with the obligation to keep the accounting records and records required by tax provisions and tax-related commercial law provisions, according to generally accepted accounting rules and standards."

### **SECTION III**

#### **Tax crimes**

"Article 90. Penalties for misleading the Tax Administration. Any party guilty of misleading the Tax Administration, by the simulation of information or the distortion or concealment of correct information, with a view to obtaining for the party itself or a third party a financial advantage, exemption or refund, at the expense of the public treasury, shall incur penalties as follows:

- (a) Imprisonment for one to three years, where the defrauded amount does not exceed fifty times the basic wage;
- (b) imprisonment for three to five years, where the defrauded amount is more than fifty times the basic wage."

"Article 91. Penalties for failure to remit tax collected. An agent withholding or collecting tax who after withholding or collecting the revenue fails to remit it to the Revenue authorities within the specified period shall incur imprisonment as follows:

- (a) Three to five years, where the withheld amount does not exceed fifty times the basic wage;
- (b) five to ten years, where the amount retained was in excess of that amount."

"Article 92. Penalties for altering information. Imprisonment for one to three years shall be incurred by any party who, in spite of being under an obligation to make true declarations to the Tax Administration, denies, conceals or provides in an incorrect or false manner information of tax-related

significance regarding the actions or circumstances of third parties of which the party in question is aware on the basis of economic and financial relationships with the said third party."

"Article 93. Penalties for improper handling of information. Imprisonment for one to three years shall be incurred by any party guilty of concealing or destroying information, account books, assets, documents, records, systems or computer programmes, magnetic media or other media of tax-related significance in the context of tax investigations and procedures."

"Article 94. Penalties for unauthorised access to information. Imprisonment for one to three years shall be incurred by any party who gains access by any technological means to the information systems or databases of the Tax Administration without authorisation to do so."

"Article 95. Penalties for improper handling of computer programmes. Imprisonment for three to ten years shall be incurred by any party guilty of seizing, copying, destroying, rendering unusable, altering, moving or possessing without due authorisation from the Tax Administration any computer programme used by the Administration for the management of tax information and its databases, provided that the Tax Administration has declared them to be subject to restrictions on use, by decision to that effect."

"Article 96. Penalty for disclosing code and password. Imprisonment for three to five years shall be incurred by any party who discloses the code and password he/she has been assigned for accessing the tax information systems for use by another person."

"Article 97. Penalty for providing code and password. Imprisonment for six months to one year shall be incurred by any party culpably allowing the code or password he/she has been assigned for accessing the tax information systems to be used by another person."

"Article 98. Penalties for any fraudulent action or omission committed by a public servant. Imprisonment for three to ten years shall be incurred by any public servant employed by the Tax Administration who directly or indirectly, by fraudulent action or omission, collaborates in or facilitates in any way non-compliance with a tax obligation or non-observance of the official duties of a liable party."

Article 3. Articles 99 to 104 are hereby repealed. The numbering of the present Articles 105 to 110 is hereby changed to Articles 99 to 104.

Article 4. Article 104 of the Code of Tax Rules and Procedures is hereby amended to read as follows:

"Article 104. Demands for information from tax-payers. To assist in the prompt verification of the tax situation of tax-payers, the Tax Administration may require them to submit books, files, accounting records and any other information of tax-related significance, which exists in hard copy, on a data medium or recorded by any other technology. Without prejudice to those general powers, the Administration may request the following from tax-payers and managers:

- (a) Copies of books, files and accounting records;
- (b) information regarding the computer equipment used and applications which have been developed;
- (c) copy of magnetic media containing tax information.

The costs of implementing the above indents shall be borne by the Tax Administration."

Article 5. Eleven new Articles are hereby added to the Code of Tax Rules and Procedures, numbered from 105 to 115, and reading as follows:

"Article 105.-- Third party information

All natural and legal persons, including public-sector and private parties, shall be obliged to provide the Tax Administration with information of tax-related significance based on their economic, financial and professional relationships with other persons. The information shall be forwarded as specified by the Administration, by Regulations or in an individual demand. The demand for information must be duly and expressly substantiated in terms of its relevance to tax considerations.

The Administration may not require information from the following:

- (a) Ministers of religion, regarding matters relating to their ministry;
- (b) persons who pursuant to express legal provisions are entitled to invoke professional secrecy, regarding information covered by that entitlement. Professionals are not however entitled to claim professional secrecy to impede the investigation of their own tax situation;
- (c) officials who are required, under legal provisions, to keep information, correspondence or communications in general secret;
- (d) ascendants or descendants to the third degree of consanguinity or affinity, also the spouse of the person under investigation."

"Article 106.—Specific duties of third parties. The duties laid down in this Article shall be performed without prejudice to the general obligation set down in the preceding Article, as follows:

- (a) Parties withholding tax are obliged to submit the documents reporting the amounts paid to other persons as remuneration for work, securities and professional activities;
- (b) firms, associations, foundations and professional bodies are required to submit information of tax significance held in their records regarding their members;
- (c) persons and entities, including banking and credit entities and finance agencies in general which under legislation or their constitution or habitually provide management services or operate on the basis of professional fees or commissions, must provide information on the yield from their activities of raising and investing funds, or acting as brokers or intermediaries in the capital markets;
- (d) persons or entities acting as custodians of funds in cash or in accounts, securities or other assets of debtors to the public treasury during the collection procedures by Court order, shall be obliged to provide information to the authorities and collection enforcement agents, and to comply with the instructions given to them by such authorities and agents in the exercise of their legal powers;



- (e) banks and credit and financial institutions, in both the public and private sectors, must provide information regarding the financial and business transactions of their customers or users. In this case the Director General of Direct Taxation, by a duly substantiated decision, shall request the competent Court authority to order the provision of this information, subject to compliance with the provisions of the subsequent paragraphs of this Article.

Information may only be sought on tax-payers or parties subject to an obligation which have been preselected on the basis of objective selection criteria for auditing, as published by the Tax Administration and included in the Annual Audit Plan current on the date of the request.

In the application it must also be demonstrated that there is solid evidence that a tax offence may have been committed.

In addition, the application may also include information on third-party tax-payers where the results of the investigation of one tax-payer meeting the above requirements indicate that such third parties may be involved in tax offences."

"Article 107. Disclosure duties of public servants and others. Public servants in the employment of any department or public-sector agency, autonomous and semi-autonomous institutions, public enterprises and other decentralised State and municipal institutions shall be obliged to provide the Tax Administration with any information and past records of tax-related significance gathered by them in the performance of their functions."

"Article 108. Information demands. The Tax Administration may require beneficiaries of tax incentives to provide information on compliance with requirements and evidence of entitlement to the incentives received."

"Article 109. Guidelines for the forwarding of tax information. The Tax Administration may draw up guidelines on the manner in which tax information is to be forwarded. In addition, it may require that parties subject to tax obligations and managers keep the necessary books, files and records of their business dealings to allow correct auditing and assessment of their tax obligations and supporting documents, such as invoices, tickets and other documents, to facilitate verification procedures. Tax-payers or managers must keep duplicates of these documents for a period of four years.

The Administration may require that the accounting records be corroborated by appropriate supporting documents."

"Article 110. Accounting system at tax domicile. Parties subject to tax obligations must keep all accounting documents and related supporting documents at the tax domicile or location expressly authorised by the Tax Administration."

"Article 111. Inventories. The Tax Administration may take inventories, audit inventory operations or check inventory lists against actual stock, endeavouring as far as possible to avoid any effect on the operations of the liable party. A record of these procedures shall be drawn up, with a copy to be provided to the liable party."

"Article 112. Power to summons liable parties and third parties. The Tax Administration may summons liable parties and third parties involved in the tax obligation in question to appear in the offices of the Tax Administration, to reply, verbally or in writing, to the questions or requests for information required to verify and audit the relevant tax obligations, in accordance with due process. A record must be drawn up of every such appearance."

"Article 113. Inspection of premises. Where required for the determination or auditing of the tax situation of liable parties, the Tax Administration may inspect the premises occupied in any capacity by the liable party in question. In the event of denial of or resistance to the procedure, the Administration, by a decision with supporting reasons, shall seek authority from the competent Court authority to carry out a search, which shall be subject to the formal requirements set down in the Code of Criminal Procedure."

"Article 114. Sequestration. The Tax Administration may request the competent Court authority, by a decision with supporting arguments, to grant authorisation for the sequestration of documents or assets which must be preserved for the purposes of assessment of the tax obligation, or, where applicable, to secure the evidence of the commission of a tax breach or offence.

The purpose of this measure shall be to ensure the safe keeping of such documents or assets, and the duration of the measure shall not exceed thirty calendar days, extendable for the same period.

When this procedure is carried out, a record and inventory list of the sequestered assets must be drawn up, and a Court-appointed custodian must be designated. The sequestration of assets shall be subject to the formal requirements set down in the Code of Criminal Procedure."

"Article 115. Use of information. The information obtained or gathered may be used solely for tax purposes as required by the Tax Administration, which shall be prohibited from forwarding the information to other agencies, departments or institutions in the public or private sector. Non-compliance with this provision shall constitute the offence of disclosure of secrets under Article 337 of the Criminal Code.

The prohibition set down in this Article shall not impede the forwarding or use of any information required by the ordinary Courts.

Any information and evidence of a general nature obtained or gathered as a result of illegal actions carried out by the Tax Administration shall not have any legal effects on the liable party being audited .

Article 6. The numbering of the present Articles 111 to 145 of the Code of Tax Rules and Procedures is hereby changed to Articles 116 to 150.

Article 7. The last paragraph of Article 117, Article 128 (b) and (e), and Article 147 (g) are hereby amended, and an indent (h) is hereby added to Article 147, as follows:

"Article 117. Confidentiality of information

The information obtained by the Tax Administration from tax-payers, managers and third parties, by any means, shall be confidential, and its officials and employees may not disclose in any way the amount or origin of income or any other information appearing in the declarations, and shall not allow the declarations or copies thereof, or books or documents containing extracts from or references to the declarations, to be seen by any persons other than those assigned by the Administration to monitor compliance with the legal provisions governing the taxes for which it is responsible.

Notwithstanding the provisions of the preceding paragraph, the tax-payer, its legal representative, or any other person duly authorised by the tax-payer may examine the information and appendices contained in its sworn declarations, and any papers on adjustments or objections formulated with respect to such declarations.

The prohibition set down in this Article shall not impede the inspection of declarations by the ordinary Courts. Nor shall the confidentiality of declarations impede the publication of statistical data or records of property values, or tax precedents pursuant to Article 107 of this Code, or the submission of reports to representatives of the Public Authorities, provided that this is done in such a way as to prevent the identification of individual persons.

The prohibition and restrictions set down in this Article shall also apply to the members and employees of the Administrative Tribunal on Tax Issues (*Tribunal Fiscal Administrativo*) and the staff of banks in the National Banking System, non-bank special finance and investment companies and other entities under the control of the Auditor General of Financial Entities."

"Article 128. Obligations of private individuals. Tax-payers and managers shall be obliged to assist with assessment, auditing and investigation procedures carried out by the Tax Administration, and in particular must comply with the following obligations:

- (a) Where so required by laws or regulations, or so demanded by the said Administration under the powers granted in this Code
  - (i) to keep the special books and records pursuant to Article 110 (a) of this Code;
  - (ii) to enter themselves in the relevant registers, providing the required information and making prompt notification of any changes; and
  - (iii) to submit the required declarations;
- (b) to keep orderly journals, books, records, documents and details of any operations and situations constituting taxable acts;
- (c) to provide assistance to tax officials authorised to carry out inspections or audits in their commercial or industrial establishments, buildings, offices, depots or any other premises;
- (d) to present or produce at the offices of the Tax Administration or to authorised officials the declarations, reports, documents and other evidential material relating to acts giving rise to their tax obligations, and to formulate any applications or clarifications requested from them;
- (e) to notify the Administration of any change in their tax domicile;
- (f) to attend, either in person or through the intermediary of duly authorised representatives, at the offices of the Tax Administration when their presence is requested."

"Article 147. Requirements for decision notices. All notices of administrative decisions must meet the following requirements:

- (a) Statement of place and date;
- (b) identification of the tax, the financial year in question and, where applicable, the valuation;
- (c) evaluation of the evidence and defence arguments;

- (d) grounds for the decision;
- (e) assessment factors applied, in cases involving estimates of a presumed base figure;
- (f) statement of the amounts payable as tax and the breaches identified;
- (g) characterisation of the breaches committed, for application of the surcharges referred to in Articles 57 and 76 of this Code;
- (h) signature of the official legally authorised to decide on the matter. The absence of any of these requirements shall render the deed null and void."

Article 8. The Fifth Section of Chapter IV of Title IV of the Code of Tax Rules and Procedures is hereby replaced with the following:

**"FIFTH SECTION, CHAPTER IV OF TITLE IV OF THE CODE OF TAX RULES AND PROCEDURES**

**Procedure for the application of administrative penalties**

"Article 148. General principles. In all cases, the Tax Administration shall be required to prove that the liable party is the party which committed the breach, in accordance with the principle of free evaluation of evidence, and on the basis of the penalty procedure referred to in this Section. It must also respect the right of defence."

**"Article 149. Competent authorities for the imposition of penalties**

Administrative tax penalties shall be imposed by the entities of the Tax Administration issuing the administrative rules for assessment of tax, or, where applicable, the withholding revenue payable to their account."

"Article 150. Procedure for application of penalties. The penalty application process shall be initiated by a recommendation, with supporting arguments, from the competent official or the head of the administrative unit dealing with the matter, or by a recommendation, with supporting arguments, from officials of the Tax Administration, if they identify within the documents transactions, actions or omissions constituting tax breaches.

On submission of the recommendation, the party which may have committed the breach shall be notified of the accusations against it, and shall be given a period of ten business days to submit any statements it wishes to make and provide the relevant evidence.

On completion of that procedure, the Tax Administration shall issue a decision on the matter within the next fifteen business days.

The decision by the competent entity or authority must be based on the facts regarded as proven for the application of the principal monetary penalty by the entities of the Tax Administration; this is also governed by the provisions laid down for the legal category of the breach involved.

The decision shall be subject to appeal for reconsideration by the authority which issued the deed, or alternatively appeal to the Administrative Tribunal on Tax Issues. Both types of appeal must be filed within a period of five business days from the date of dispatch of the decision. The Tax Tribunal must decide the matter within one year.

Decisions may also be challenged under the general regime for administrative disputes which is set down in this Code and in the Administrative Disputes Jurisdiction Law; however, the provisions of Article 83 9) of that Law shall not apply. With respect to the suspension of enforcement of the administrative deed imposing the penalty, the general regime pursuant to Articles 91 ff. of the Administrative Disputes Jurisdiction Law shall apply."

Article 9 Four Articles, numbered 151, 152, 153 and 154, are hereby added to the Code of Tax Rules and Procedures, reading as follows:

"Article 151. Special case. If the breach is related to the illicit enjoyment of tax benefits previously, the procedure pursuant to Chapter IX of the Law on all current exemptions and exemption cancellations and exceptions, Law No.7293, of 31 March 1992 must be used as far as possible."

"Article 152. Decision of competent authority. In all cases, the imposition of penalties shall require an express decision by the competent authority, and the penalty shall take effect from the day following the date of notification to the offending party."

"Article 153. Initiation of the case. Exhaustion of administrative avenues in the tax assessment procedure shall not be a pre-requisite for initiation of the case."

"Article 154. Records of inspections. Inspection reports or records must state the circumstances of the breach being alleged. The party concerned must sign the deed and enter such statements as it sees fit. If the party refuses to sign or is unable to do so, the official acting in the matter must record this fact."

Article 10. The numbering of the present Articles 146 ff. of the current Code is hereby corrected to Art. 155 ff.

Article 11. Articles 156, 161 and 163 of the Code of Tax Rules and Procedures are hereby amended to read as follows:

#### "CHAPTER V FORMS OF RECOURSE

"Article 156. Appeal recourse. The administrative decisions referred to in Articles 29, 40, 43 102, 119 and 146 and in the last paragraph of Article 168 of this Code are subject to appeal by the parties concerned to the Administrative Tribunal on Tax Issues, within a period of fifteen days after the date of notification. The same recourse shall be available if the Tax Administration fails to issue the decision in question within the time-limit of two months specified in the second paragraph of Article 46 of this Law.

On receipt of the appeal and the information on the matter, as specified in the preceding paragraph, the Administrative Tribunal on Tax Issues shall notify the party concerned, so that it can present relevant pleadings and evidence in defence of its rights, if it wishes to."

"Article 161. Composition of the Administrative Tribunal on Tax Issues. The Executive shall designate, on an individual basis, the Presiding Judge and four regular members of the Administrative Tribunal for Tax Issues, following consideration of the candidates' backgrounds; this shall be performed as a formal procedure, with the involvement of the authorities specified in the Civil Service Rules. The formal procedures and substantive provisions of those rules shall also apply with respect to the removal of the members of the Tribunal.

The remuneration of the members of the Tribunal must be the same as that of the members of the higher Courts of the judiciary; the remuneration of other staff shall be aligned, as applicable, with

staff in equivalent positions of the said Courts or other institutions of the judiciary performing the same or similar functions."

"Article 163. Operation of the Administrative Tribunal for Tax Issues. The Administrative Tribunal for Tax issues must align its operation with the operating procedures and rules laid down in this Code and in the General Public Administration Law, the Administrative Disputes Jurisdiction Law and the Organic Law on the Judiciary, as subsidiary provisions.

To deal with the cases referred to it, the Tribunal shall set equal, non-extendible time-limits for the parties to present their pleadings and evidence in their defence, in the spirit of endeavouring to arrive at the real truth of the matter and maintaining the required level of efficiency and dispatch in the proceedings. To rebut the allegations and accusations made by the Tax Administration, the Administration client may have resort to any form of proof accepted by the applicable rules of positive law. Reports and certification statements from authorised public accountants, other professionals whose statements have legal authority, or competent public authorities designated independently by the Administrative Tribunal for Tax Issues shall be regarded as sufficient evidence, and in that case the burden of proof for rebutting such evidence shall be on the Tax Administration."

#### MODIFICATIONS AND ADDITIONS TO THE INCOME TAX LAW, LAW NO. 7092, OF 21 APRIL 1988, AND AMENDMENTS THERETO

Article 12. Indents (d) and (f), the first paragraph of indent (m) and the antepenultimate and penultimate paragraphs of Article 8 of the Income Tax Law, Law No. 7092, of 21 April 1988, and amendments thereto, are hereby amended to read as follows:

"Article 8. Deductible expenses. The following may be deducted from gross income:

- (a) The costs of goods and services sold, such as the purchase of goods and services within the line of business of the enterprise; raw materials, parts, components and services for the production of the goods and services sold; fuel, motive power and lubricants and similar; and the costs of agricultural activities required to generate the income;
- (b) pay, extra pay, wages and salaries, bonuses, rewards, commissions, gifts, tokens of appreciation and any other form of remuneration for personal services actually provided, subject to any withholding requirements applicable and payment of the taxes referred to in Title II of this Law.

In addition, an equal amount may be deductible over and above sums paid in the categories referred to in the preceding paragraph to disabled persons with severe physical handicaps, in accordance with the requirements, conditions and rules laid down in the Regulations implementing this Law;

- (c) taxes and levies on goods, services and transactions in the normal course of business of the enterprise, or activities performed by natural persons, with the exceptions given in Article 9(c);
- (ch) premiums for insurance against fire, robbery, theft, earthquakes and other risks, contracted with the National Insurance Institute (*Instituto Nacional de Seguros*) or with other authorised insurance institutions;
- (d) interest and other financial expenses, paid or incurred by the tax-payer during the financial year, which are directly related to the operation of its business and the

generation of income taxable by this tax on income, provided that the expenses have not been capitalised in the accounts.

The deductions in this category shall be subject to the limitations laid down in the following paragraphs:

Interest and other financial expenses paid in favour of the members of private limited companies shall not be deductible, since these are regarded as equivalent to dividends or equity investments.

The portion of interest attributable to a rate higher than normal market rates having been agreed shall not be deductible.

Interest shall not be deductible in cases where the tax thereon has not been withheld.

Where the amount of interest claimed as a deduction by the tax-payer is in excess of fifty per cent (50 per cent) of the cash income, the tax-payer must complete a special form to be provided by the Tax Administration, and also provide the additional information and evidence specified in the form.

For the purposes of the preceding paragraph, "cash income" means the total net income as defined in Article 7 of this Law, less the total income from interest during the period, plus the deductions for deductible finance interest as defined in this Article.

Once a year, prior to the start of the financial year, the Executive may issue a Decree stipulating a percentage higher than fifty per cent (50 per cent) as the criterion for the tax-payer being required to submit the special form referred in the last paragraph but one.

The fact of tax being owed to the tax-payers referred to in the first paragraph of this indent shall not limit the powers of the Administration to request information and evidence, and to carry out the inspections required to verify the legality of interest deductions, in accordance with the powers granted in the Code of Tax Rules and Procedures.

In any event, the tax-payer must provide the Tax Administration with demonstration of the use of the loans for which it wishes to deduct interest, in order to show the required linkage with the generation of taxable income; proof of this is to be provided in the documents to accompany the declaration.

Without prejudice to the situations set out in the preceding indents, any other circumstance indicating the lack of a linkage between the interest paid and the taxable income in the period in question shall cause the deduction of interest to be inadmissible;

- (e) debts which are clearly not possible to collect, provided that they originated from operations within the normal course of business, and subject to exhaustion of legal avenues for collection, in the view of the Tax Administration and in accordance with the rules set down in the Regulations implementing this Law;
- (f) depreciation offsetting wear, deterioration or economic, functional or technology obsolescence of tangible assets generating taxable income which are owned by the tax-payer, and depreciation on permanent improvements or revaluations, in this case as laid down in Article 6 (b). No depreciation on the value of land shall be accepted.

The Regulations will specify the maximum percentages which can reasonably be allocated as depreciation and the number of years of the useful life of assets; due consideration shall be given to the nature of the assets and the economic activity in which they are used.

Whenever the tax-payer disposes of tangible assets subject to depreciation, on any basis, for a value different from the asset value as at included as taxable income or a deductible loss, as applicable, in the period in which the transaction takes place.

The value of invention patents owned by the tax-payer may be amortised on the basis of its term of validity.

In the case of livestock – specifically livestock for the production of milk and meat – and certain crops, depreciation or amortisation shall be allowed in accordance with the provisions of the Regulations implementing this Law. Crops which in the view of the Tax Administration cannot be regarded as permanent in terms of their production efficiency cycle, may be depreciated over a number of years directly related to their production cycle;

- (g) if an industrial enterprise makes a loss in a financial year, the loss shall be accepted for deductions in the following three financial years. In the case of agricultural enterprises, the deductions may be made over the following five financial years.

Any industrial enterprises commencing activities after the entry into force of this Law may deduct such losses over the following five financial years, but shall thereafter be subject to the rule set down in the first paragraph of this indent.

The assessment of the loss shall remain at the discretion of the Tax Administration, which shall accept the loss provided that it is duly accounted for as deferred losses. Enterprises which by their nature inherently carry out agricultural or industrial activities in combination with trading activities must keep separate accounts for each activity, to enable this deduction to be made.

The tax-payer shall not be entitled to claim any refunds or tax credits for any balance not offset within the periods specified;

- (h) the proportional amount for depletion of exploitable non-renewable natural resource assets, including the expenditure incurred to obtain the concession, where applicable. This deduction must be linked to the cost of the asset and the estimated useful life, according to the nature of the exploitation operations and the activity, and in accordance with the rules on this aspect laid down in the Regulations implementing this Law.

The deductions for depletion of non-renewable natural resources may never in any circumstances exceed the acquisition cost of the asset.

The provisions of this indent cover the exploitation of mines and quarries and deposits of petroleum, gas and any other non-renewable natural resources;

- (i) employers' contributions laid down in legislation;
- (j) remuneration, pay, commissions, fees or allowances paid to members of boards of directors or other executive and supervisory entities operating abroad;
- (k) payments or credits granted to persons not domiciled in Costa Rica for technical, financial or other consulting services, and for the use of patents, the provision of formulas, trademarks, franchises, exemptions, commissions and similar;



Where such payments or credits are in favour of the parent companies or branches, subsidiaries, agencies or permanent establishments located in Costa Rica, the total deduction for the items referred to may not exceed ten per cent (10 per cent) of gross sales revenue during the financial year in question. Tax must have been withheld in accordance with the provisions of this Law;

- (l) payments or credits granted to persons not domiciled in Costa Rica for the provision of news, for the production, distribution, brokering or any other form of negotiation in Costa Rica of cinematographic films and films for television, videotapes, radio serials, phonographic disks, cartoons, photoromances and any other similar medium for the projection, transmission or diffusion of images or sounds;
- (m) entertainment costs and similar incurred in Costa Rica or abroad, per diem allowances allocated or paid to owners, company members, members of boards of directors or other management structures or to officials or employees of the tax-payer, provided that deductions for these items do not represent any more than one per cent (1 per cent) of the gross income declared.

Also deductible are expenses incurred for bringing technical experts to Costa Rica or for sending employees of the tax-payer to gain specialist skills abroad;

- (n) setting-up costs for enterprises, which may be deducted in the financial year in which they are paid or credited, or if accumulated, over five consecutive financial years, as from the date of commencement of the enterprise's production activity, until the balance is exhausted.

"Setting-up costs" refer to all costs and expenditure required for initiating the generation of taxable income which in accordance with this Law is to be deducted from the gross income;

- (ñ) severance pay, benefits and early retirement pay-outs, restricted to three times the minimum laid down in the Labour Code;
- (o) advertising and promotion costs incurred in Costa Rica or abroad, required for the generation of taxable income;
- (p) transport and communication costs, pay, professional fees or any other form of remuneration paid to persons not domiciled in Costa Rica;
- (q) duly substantiated donations made during the financial year in question to the State, its autonomous and semi-autonomous institutions, municipal councils, State universities, social protection funding boards, education boards, State teaching institutions, Costa Rica Red Cross and other institutions such as charitable, scientific or cultural associations or foundations; also donations to civil and sporting associations designated by the Executive as public good entities pursuant to Article 32 of the Associations Law, or to committees officially appointed by the Directorate-General of Sports in areas defined as rural areas, in accordance with the Regulations implementing this Law, during the relevant financial year.

The Directorate-General of Direct Taxes shall have full discretion to assess and determine the genuine nature of the donations referred to in this indent, and may so assess and determine donations, where they are made to charitable, scientific or cultural entities and to sports committees officially appointed by the Directorate-General of Sports in areas defined as rural areas, only in accordance with the Regulations implementing this Law. Those Regulations shall specify the conditions and controls to be laid down for such donations, for both the donor and the recipient.

As beneficiaries of the donations referred to in this indent, the childhood centres established by the Social Promotion for Women's Equality Law;

- (r) losses from the destruction of assets as a result of fire, crimes committed against the enterprise, duly substantiated, and only for the portion not covered by insurance;
- (s) professionals or technical experts providing their services without any employment relationship with their customers, and sales agents, agents on commission and insurance agents may deduct the expenditure required for generating their taxable income in accordance with generally applicable rules, or alternatively may claim a one-off deduction, without the need for any kind of proof, of twenty-five per cent (25 per cent) of the gross income from the activity of the commissions payable, as applicable;
- (t) all the deductions referred to in the Agricultural Production Development Law, Law No. 7064 of 29 April 1987.

The Tax Administration shall accept all the deductions referred to in this Article, except the deduction according to indent (q), subject to compliance with all of the following requirements:

1. That the expenditure is necessary for the generation of actual or potential income taxable under this Law;
2. that the party has fulfilled the obligation to apply withholding arrangements and pay the tax required under other provisions of this Law;
3. that the supporting documents have been duly authorised by the Tax Administration. The Tax Administration shall have discretion to apply exceptions in special cases, as set down in the Regulations implementing this Law.

The Tax Administration shall be empowered to reject, in full or in part, the types of expenditure referred to in indents (b), (j), (k), (l), (m), (n), (o), (p), (s), and (t) above, where it considers them to be excessive or not applicable, or does not consider them as indispensable for the generation of taxable income, on the basis of duly substantiated research conducted by the Tax Administration.

For deduction of expenditure incurred but not paid during the year, it shall be a requirement that these have been recognised in a special account, so that when they are paid in fact they can be allocated to that account. The deduction of expenses paid shall not be accepted if in a previous financial year the same expenses were deducted as merely having been incurred."

Article 13. Article 13 of the Law on income tax, Law No. 7092, of 21 April 1988, and amendments thereto, is hereby modified to read as follows:

"Article 13. Other assumed income. For tax-payers who are natural persons, irrespective of their nationality and place of execution of contracts, and also for sole proprietorships with limited liability and sole proprietorships operating in Costa Rica, it shall be presumed, in the absence of direct or indirect proof to the contrary, they derive minimum annual income as follows:

- (a) provisions of services as an independent professional: any professional or technical expert providing services without any employment relationship with his/her customers, who fails to submit an income declaration at the required time, and consequently fails to pay the required tax or fails to issue receipts or supporting

documents duly authorised by the Tax Administration, as laid down in this Law, or is in one of the situations set out in indents (1) and (2) of this Article, shall be presumed to derive minimum annual net income in accordance with the following classification:

- (i) medical practitioners, dentists, architects, engineers, lawyers and notaries, surveyors, public accountants, economists, and real estate brokers, the equivalent of three hundred and thirty-five (335) basic wages;
  - (ii) experts, private accountants, technical specialists, and generally all professionals and technical experts, whether members of a professional college or not, who are not included under the previous number, the equivalent of two hundred and fifty (250) basic wages. In no case shall this presumed income be pro-rated between the time the professional or technical expert spends providing other services, possibly under an employment relationship, or on the performance of other activities subject to this tax;
- (b) for parties providing passenger and freight land transport services, for a financial consideration, who fail to submit declarations or who are in any of the situations referred to in indents (1) and (2) of this Article, the presumed minimum annual net income shall be the equivalent of the following:

freight vehicles with a gross vehicle weight greater than or equal to four thousand (4,000) kilograms: one hundred and seventeen (117) basic wages per vehicle;

buses: one hundred and seventeen (117) basic wages; minibuses: eighty-four (84) basic wages; taxis: eight-four (84) basic wages. No splitting of this income amount is permitted for calculation of the tax. The calculation shall be carried out before the allocation of dividends or any other type of profit between members, shareholders or beneficiaries, and before appropriating legal or special reserves. The presumptions laid down in this Article shall be applied in either of the following situations:

1. failure to submit an income declaration;
2. failure to record operations properly in legal books, supported by credible supporting documents, on stamped paper where applicable.

The presumptions set out in this Article shall not limit the powers of the Tax Administration to determine the amounts of net income actually derived, pursuant to the provisions of this Law and the Code of Tax Rules and Procedures.

The term "basic wage" as used in this Article shall be understood as defined in Article 2 of Law No. 7337."

Article 14. Articles 20 and 21 of the Income Tax Law, Law No. 7092, of 21 April 1988, and amendments thereto, are hereby modified to read as follows:

"Article 20. Time-limit for submission of declarations and payment of tax

The liable parties referred to in Article 2 of this Law must submit the sworn declaration of their income and simultaneously pay the tax, at the locations specified by the Tax Administration, within three months of the end of the financial year, irrespective of the amount of the gross revenue generated, and even if the revenue is totally or partially exempt, or not subject to tax payment on the basis of legal provisions.

The declaration submitted must be accompanied by the annual financial statements and notes explaining each item in the statements. These items must correspond to the records in the accounting books and with the supporting documents substantiating the entries. Tax-payers with activities relating to an accounting period of less than four months between the commencement of business activities and the end of the financial year shall be exempted from the requirement to submit a declaration for that time, but transactions relating to that period must be included in the subsequent declaration. In addition, the determination of the amount payable must be made separately for each period.

In the situation where a tax-payer has ceased its business activity, and is accordingly not required to submit a sworn declaration of its income, it must notify the Tax Administration in writing, and enclose a final declaration and final statement or balance sheet, within thirty days of the ending of its business activity, on which date it must pay the relevant tax, if any.

In the case of enterprises as referred to in Article 2 of this Law, the obligation to submit the sworn declaration of income shall continue even in the case of an entity which ceases to exist legally, but continues to operate in *de facto* terms.

Tax-payers under the single income tax on employment income regime shall not be required to submit the declaration specified in this Article.

The obligation to submit the declaration shall continue to apply even if tax is not paid."

"Article 21. Determination and payment of the tax or tax on disposable income. The tax payable on the basis of the determination in a declaration submitted by the due date must be paid within three months of the end of the financial year in question, except in the situation referred to in the third paragraph of Article 20 of this Law.

The tax amount determined, along with any surcharges, interest or fines in the case of declarations not submitted within the time-limit, must be paid to Banco Central de Costa Rica, its branches or authorised payment offices.

The official receipt, duly stamped by the revenue collection agency, shall be sufficient proof of payment of the amounts indicated thereon.

The tax referred to in Articles 18 and 19 of this Law must be paid to the Revenue authorities within the first ten business days of the month following the month of the payment, withdrawal or crediting of the disposable income.

Where payment is made by cheque, the validity of the receipt shall be conditional upon the cheque not being rejected by the bank on which it is drawn."

Article 15. Indent (c) and the last paragraph of Article 22 are hereby modified to read as follows:

"Article 22. Partial payments of tax. The tax-payers referred to in Article 2 of this Law shall be obliged to make partial payments on account of the tax for each financial year, in accordance with the following rules:

- (a) The partial payment instalments shall be calculated on the basis of the tax assessed for the immediate past year, or the arithmetical mean of the last three financial years, whichever is the larger.

In the case of tax-payers which for any reason have not submitted declarations in the previous three years, the partial payment instalments shall be calculated on the basis of the declarations submitted, and if this is the first declaration, by means of an estimate, with supporting arguments, to be provided to the Tax Administration by the tax-payer in question. This estimate must be submitted by no later than the month of January each year. If they fail to do so, the Tax Administration shall set the instalment ex officio;

- (b) when the amount of the advance payment has been determined, seventy-five per cent (75 per cent) of that amount shall be divided into three equal instalments, to be paid by the last business day of March, June and September each year;
- (c) the total tax determined as payable on submission of the sworn declarations shall be reduced by the partial payments for the financial year in question. The balance must be paid within three months of the end of the financial year in question. Enterprises which derive their income exclusively from agricultural activities may pay the tax for the financial year in a single instalment, within three months of the end of the financial year in question.

The Tax Administration may adjust the partial payment instalments if so requested by a taxpayer in writing before the payment deadline, where it is demonstrated to the satisfaction of the Administration that the calculation basis has been affected by extraordinary income or where losses are expected for the financial year in question."

Article 16. An indent (g) is hereby added to Article 23 of the Income Tax Law, Law No. 7092, of 21 April 1988, to read as follows:

"Article 23. Withholding at source. All public-sector and private-sector enterprises, whether or not they are liable to payment of the tax, including the State, the banks of the National Banking System, the National Insurance Institution and other autonomous and semi-autonomous institutions, municipalities and the associations and institutions referred to in Article 3 of this Law, shall be obliged to act as tax withholding or collection agents when they pay or credit income which is subject to the tax governed by this Law. To that end, the said liable parties must withhold and pay to the Revenue authorities, on behalf of the recipients of the forms of income mentioned below, the amounts specified in each case:

- (a) Wages and salaries or any other form of remuneration paid in relation to work done in a personal capacity as an employee. In this case the payer or employer must calculate the monthly tax for each recipient of such income.

If the beneficiary is a person domiciled outside Costa Rica, the amounts of tax as specified in Article 54 of this Law shall be withheld from the amount paid. The implementing Regulations shall include the provisions referred to in this indent;

- (b) per diem allowances, allowances and other benefits paid for personal services performed as an employee. In these cases, if the recipients of such income are persons domiciled in Costa Rica, the payer must withhold ten per cent (10 per cent) of the amounts paid or credited to the said persons; the recipients of the income are persons not domiciled in Costa Rica, the relevant amounts as set down in Article 54 of this Law shall be withheld.
- (c)

1. Issuers, payment agents, corporations and other public-sector or private-sector entities which in their capacity as parties sourcing funds on the financial markets pay or credit interest and grant

discounts on notes and all kinds of negotiable securities to persons domiciled in Costa Rica must withhold fifteen per cent (15 per cent) of the said income as tax.

In the case of negotiable securities which are registered on an officially recognised stock exchange or have been issued by financial entities duly registered with the Auditor General of Banks, in accordance with Law No. 5044 of 7 September 1972 and amendments thereto, by the State and its institutions, by banks in the National Banking System, or by co-operatives, or in the case of drafts and bank acceptances, the percentage applicable shall be eight per cent (8 per cent).

In situations where the banks and financial entities referred to in the preceding paragraph endorse drafts or bank acceptances, the withholding requirements shall be based on the value of the discount, which for these purposes shall be equivalent to the deposit rate fixed by Banco Central de Costa Rica for the period in question, plus three percentage points.

The following shall not be subject to income tax or the provisions of this indent: income derived from negotiable securities in foreign currency issued by the State or State banks, and securities issued in local currency by Banco Popular y de Desarrollo Comunal and by the National Financial System for Housing (*Sistema Financiero Nacional para la Vivienda*), pursuant to Law No. 7052 of 13 November 1986; trust fund investments without a profit objective, established pursuant to Article 6 of Law No. 7044 of 29 September 1986, Law establishing the Rain Forest Region Agricultural School (*Escuela de Agricultura de la Región Tropical Húmeda*).

In addition, the withholding requirement shall not apply, solely in the case of the entities listed in the situations set down in Article 3(a) of this Law, or to Banco Popular y de Desarrollo Comunal, where they invest in negotiable securities issued by the Ministry of Finance.

The amounts withheld shall be regarded as a sole and definitive tax payment.

The Directorate-General of Direct Taxes is hereby empowered to authorise another generally applicable method of payment in cases where the nature of the security makes it difficult to apply withholding at source.

2. The tax withholding arrangements referred to in the preceding indents shall be applied on the date on which the relevant payment or credit is made, whichever occurs first. In addition, the amounts must be deposited at Banco Central de Costa Rica or its auxiliary collection points, within the first ten business days of the month following the date in question;

(ch) surpluses paid by co-operatives, solidarity associations and similar organizations.

These entities must pay the Revenue authorities on behalf of their members, as a sole and definitive tax payment, an amount equivalent to five per cent (5 per cent) of the surplus or profit distributed;

(d) remittances or credits in favour of recipients domiciled abroad. In this situation the payer shall withhold, as sole and definitive tax payments, the tax amounts applicable pursuant to Article 54 of this Law;

(e) transport, communications, reinsurance, cinematographic films, international news and the other services mentioned in Article 11(a), (b), (c) and (ch) of this Law, provided by enterprises not domiciled in Costa Rica. In this situation, if the enterprises providing the services have a permanent representative in Costa Rica, the user enterprises must withhold, as payment on account of the tax pursuant to Article 15 of this Law, three per cent (3 per cent) of the amounts paid or credited.

Where such enterprises do not have a permanent representative in Costa Rica, the enterprises using the services must withhold, as a sole tax payment, the following amounts:

- (i) eight point five per cent (8.5 per cent) of the amount paid or credited, in the case of transport and communications services;
- (ii) five point five per cent (5.5 per cent) in the case of re-insurance, refinancing and transferred premiums of any kind;
- (iii) twenty per cent (20 per cent) of the amount paid or credited in the case of the provisions of the other services specified in indent e);
- (f) profits, dividends and shares: in these cases the provisions referred to in Articles 18 and 19 of this Law shall apply.

The persons acting as tax withholding or collection agents must deposit the withholding amounts at Banco Central de Costa Rica, its branches or authorised auxiliary payment points within the first ten business days of the month following the date in which the payments were made. The implementing Regulations shall lay down, in each case, the requirements to be met by withholding or collection agents and the requirements regarding the reports they are required to submit to the Tax Administration, and also the supporting documents they are required to provide to the persons from whom the amounts have been withheld.

The requirements to be met and the form of the withholding arrangements referred to in this Article shall be set down in the Regulations implementing this Law;

- (g) the State or its autonomous or semi-autonomous institutions, municipalities, public-sector enterprises and other public-sector entities, who pay or credit income to natural or legal persons domiciled in Costa Rica in the context of public or private calls for tenders, contracts, transactions or other operations carried out by them, shall withhold two per cent (2 per cent) of gross income on the said amounts, even in the case of payments on account or advance payments on such operations.

The tax-payer may request that the withholding amounts applied on the basis of this provision be offset against the partial payments referred to in Article 22 of this Law.

These withholding arrangements shall be implemented on the dates on which the underlying payments or credits are made. The amounts withheld must be deposited at banks in the National Banking System or branches or agencies thereof which have been duly authorised by Banco Central, within the first ten (10) days of the month following the withholding date, using the form to be provided by the Tax Administration, or, if that document is not available, the forms currently in use for payments to the Government.

Article 17. Article 27 (c) and (ch) and the first paragraph of Article 28 of the Income Tax Law, Law No. 7092, of 21 April 1988, are hereby amended to read as follows:

"Article 27. Income affected. Natural persons domiciled in Costa Rica shall be subject to the assessment, calculation and collection of a monthly tax, according to a scale to be specified, on the types of income described below, derived from personal work services as an employee or retirement or pension entitlements:

- (a) Pay, extra pay, wages and salaries, bonuses, rewards, gratuities, commissions, overtime payments, gifts, tokens of appreciation in excess of that specified in Article 30(b), paid by employers to employees for the provision of personal work services;
- (b) attendance fees, bonuses and percentage shares received by executives, directors, advisers and members of corporations and other legal entities;
- (c) other income or benefits similar to those mentioned in preceding indents, including wages or salary paid in kind;
- (ch) retirement and pension entitlements under any form of regime.

Where the income and benefits referred to in indent (c) are not represented by a specific amount, the Tax Administration shall be responsible for assigning a monetary value, at the request of the party required to withhold tax.

If no such application is made, the Directorate-General of Direct Taxes shall determine the value in question ex officio."

"Article 28. Tariff scale. The employer shall withhold the tax referred to in the preceding Article on the total income received monthly by the employee. In the case of indents (a), (b) and (c) of the preceding Article, the arrangements shall be implemented by the Ministry of Finance, and in the case of indent (ch) of the same Article, by all other public-sector or private-sector entities paying pensions. Implementation shall be on the basis of the following progressive scale of tariffs:

- (a) Income up to ¢ 96,000.00 per month shall not be subject to the tax;
- (b) amounts in excess of ¢ 96,000.00 per month, up to ¢ 144,000.00 per month, shall be taxed at ten per cent (10 per cent);
- (c) amounts in excess of ¢ 144,000.00 per month shall be taxed at fifteen per cent (15 per cent);
- (ch) persons receiving income as referred to in Article 27(b) and (c) shall pay ten per cent (10 per cent) on the gross income, without any kind of deduction.

The tax referred to in this Article payable by persons whose sole source of income is personal work services as an employee or retirement or pension entitlements shall have the status of sole tax payments on the amounts in question. Sums in excess of that amount shall be treated in the manner specified in Article 41 of this Law.

Article 18. Article 38 of the Income Tax Law, Law No. 7092 of 21 April 1988, is hereby modified to read as follows:

"Article 38. Certification of amounts withheld. In each financial year, the employer or payer must provide its employees, pensioners or retirees with a statement showing the total remuneration paid and the tax withheld and paid.

The Regulations implementing this Law may also set down further requirements to be met by withholding parties, or the documents they are required to submit to the Directorate-General of Direct Taxes."



Article 19. Article 46 of the Income Tax Law, Law No. 7092, of 21 April 1988, is hereby modified to read as follows:

"Article 46. Accounting books. The Regulations implementing this Law shall set down the requirements and conditions to be met regarding accounting books and other records to be kept by tax-payers, and also regarding any special systems they may request.

The provisions of this Law regarding the accounting systems of tax-payers shall have the status of adjustments to be made to the results output from those systems, as required for the assessment of taxable income; they do not constitute accounting principles to be followed. The Tax Administration shall specify the records it is required to keep, in memorandum accounts, of the adjustments referred to in this paragraph."

#### MODIFICATION AND ADDITIONS TO THE LAW ON GENERAL SALES TAX, LAW NO. 6826, OF 8 NOVEMBER 1982, AND AMENDMENTS THERETO

Article 20. Article 2(c) of the Law on General Sales Tax, Law No. 6826, of 8 November 1982, and amendments thereto, is hereby modified to read as follows:

"Article 2. Sale. For the purposes of this Law, the term "sale" means:

- (a) A transfer of title for merchandise;
- (b) the import or clearance of merchandise into the national territory;
- (c) the sale on consignment or putting aside of merchandise, and the leasing of merchandise with option to buy;
- (ch) withdrawal of merchandise for the personal use or consumption of the tax-payer;
- (d) the provision of the services referred to in the preceding Article;
- (e) any action involving or with the ultimate purpose of the transfer of title of merchandise, irrespective of legal status and designation, and of the conditions agreed upon by the parties."

Article 21. Article 3 (c) of the Law on general sales tax,. Law No. 6826, of 8 November 1982, is hereby modified, and an indent (d) is hereby added, to read as follows:

"Article 3. Event giving rise to the obligation. The event giving rise to the tax obligation occurs:

- (a) In the case of the sale of merchandise, on the invoicing for or delivery of the merchandise, whichever occurs first;
- (b) in the case of the import or inward clearance of merchandise, on acceptance of the permit or Customs form, as applicable;
- (c) in the case of the provision of services, on the invoicing for or performance of the service, whichever occurs first;
- (ch) in the case of the use or consumption of merchandise by tax-payers, on the date of withdrawal from the enterprise;

- (d) in the case of sales on consignment and putting merchandise aside, at the time when the merchandise is put aside, as applicable."

Article 22. Article 4 and the first paragraph of Article 5 of the Law on general sales tax, Law No. 6826, of 8 November 1982, and amendments thereto, are hereby modified to read as follows:

"Article 4. Tax-payers and parties submitting declarations. Natural or legal persons, de jure or de facto, in the public or private sector, who habitually make sales or provide services are tax-payers for this tax. The tax is also payable by parties of any kind which carry out imports or inward clearances of goods, pursuant to the provisions of Article 13 of this Law.

Declarations for this tax are also to be submitted by any natural or legal persons, de jure or de facto, in the public or private sector, which make export sales.

All exporters, whether or not they are tax-payers of this tax, shall be obliged to submit declarations. The simplified tax regime is hereby created for small-scale tax-payers, as laid down in Articles 27, 28, 29 and 30 of this Law. Such tax-payers shall be required to keep special accounting records, in the manner and according to terms and conditions as laid down in the Regulations implementing this Law."

"Article 5. Registration. On commencement of its taxable activities, the persons or entities referred to in the previous Article must register in the register of tax-payers to be kept by the Tax Administration. Any persons or entities failing to apply for such registration shall be registered ex officio by the Tax Administration.

Without prejudice to any applicable penalties, persons failing to comply with registration requirements shall be obliged in any event to pay the tax, without any entitlement to a refund or credit for the tax paid on the stock of merchandise held as at their registration as tax-payers."

Article 23. The first paragraph in Article 8 is hereby modified, and a second paragraph added, to read as follows:

"Article 8. Obligations of tax-payers and parties required to submit declarations. In all cases, tax-payers and parties required to submit declarations shall be obliged to make out invoices or equivalent documents, duly authorised by the Tax Administration, on the sale of merchandise or for services provided. These documents must include the party's registration number, the sale price and tax amount, shown separately, and other details as set down in the Regulations implementing this Law. The Tax Administration shall however be entitled to exempt tax-payers and parties obliged to submit declarations from this requirement on the basis of duly substantiated requests from the parties concerned, in the case of sales made to persons who are not tax-payers of this tax.

Tax-payers and parties required to submit declarations must keep accounting records in the form and manner specified in the implementing Regulations.

Tax-payers must also show their registration number in all declarations, deposit vouchers and communications sent to the Tax Administration."

Article 24. The last paragraph of Article 11 of the Law on general sales tax, Law No. 6826, of 8 November 1982, and amendments thereto, is hereby modified to read as follows:

"Article 11. Tax base for sales of merchandise. For sales of merchandise, the tax shall be assessed on the net sale price, which for these purposes shall include the amount of the selective consumption tax, where the goods in question are subject to that tax.

The following shall not be included in the tax base:

- (a) Discounts according to normal commercial practice, provided that they are usual and generally applicable, and are shown separately from the sale price in the relevant invoices;
- (b) the value of services provided in connection with the sale of taxable merchandise, provided that the services are provided by third parties and are invoiced and accounted for separately;
- (c) finance costs invoiced and accounted for separately.

The Tax Administration shall be empowered to assess the tax base and order the collection of the tax at the level of production plants, wholesalers and Customs entities on sale prices to the end consumer at the retail level, for merchandise where it is difficult to collect the tax.

The above procedure must be adopted by a duly substantiated decision issued by the Tax Administration, containing the criteria and data required for the tax-payers to apply the tax in the correct manner.

To assess the tax base, the Tax Administration shall estimate the profit on the basis of a market research study conducted on the leading enterprises in the markets for the products in question."

Article 25. Article 13, the last paragraph of Article 14 and Article 15 of the Law on general sales tax, Law No. 6826, of 8 November 1982, and amendments thereto, is hereby modified to read as follows:

"Article 13. Tax base for imports. For the import or inward clearance of merchandise, the value used to assess the tax payable shall be determined by adding the CIF value at Costa Rica customs, the amount actually paid as import duty, the selective consumption tax or specific taxes and any other tax payable on import or inward clearance, as well as any other charges shown on the Customs permit or form, as applicable. The tax assessed in this manner shall be identified separately on those documents, and proof of payment must be provided before the merchandise is Customs cleared."

"Article 14. Tax assessment. The tax to be paid to the Revenue authorities shall be assessed as the difference between tax debits and credits, duly substantiated by supporting documents and registered in the accounting records of the tax-payer. The tax debit shall be assessed by application of the tax tariff referred to in Article 10 of this Law to the total taxable sales for the month in question.

The tax credit shall be determined by adding the tax actually paid by the tax-payer on purchases, imports or "inward clearances" it has carried out during the month in question. Tax credits arise in the case of purchases of merchandise for physical incorporation in the manufacture of goods exempt from payment of this tax, and on machinery and equipment directly intended for the production of such goods. Tax credits shall also be granted on purchases of merchandise for physical incorporation in the production of goods to be exported, whether or not they are exempt from payment of this tax.

If the tax credit exceeds the tax debit, the difference shall constitute a tax balance in favour of the tax-payer.

Tax credits for domestic purchases must be substantiated by invoices or supporting documents duly authorised by the Tax Administration."

"Article 15. Determination and payment. The tax-payers referred to in Article 4 of this Law must determine the tax payable by no later than the last day of each month, by submitting a sworn declaration of the sales for the previous month. The tax in question must be paid at the time the declaration is submitted. The obligation to submit a declaration still applies even where no tax is paid, or where the difference between the tax debit and the tax credit constitutes a balance in favour of the tax-payer.

The tax, or where applicable the declarations, shall be paid or submitted at the locations specified by the Tax Administration to tax-payers. The obligation to submit declarations shall continue until such time as the tax-payer's registration has been cancelled, even if the obligation to pay tax does not apply for any reason. Tax-payers with agencies or branches in Costa Rica must submit a single declaration for all transactions performed by such establishments and those for their parent establishments."

Article 26. Article 20 of the Law on general sales tax, Law No. 6826, of 8 November 1982, and amendments thereto is hereby modified, and an Article 20 bis is added, to read as follows:

"Article 20. Closure of businesses. The Tax Administration shall be empowered to order the closure of establishments for a period of fifteen days and to apply other administrative or criminal penalties set down in the Code of Tax Rules and Procedures, subject to observance of due process, to any tax-payers or their representatives or employees, as applicable, who commit the following breaches:

1. Failure to issue the invoice or supporting document duly authorised by the Tax Administration, or failure to provide these to the customs as part of the purchase, sale or service provision transaction;
2. failure to collect or withhold the relevant tax;
3. falling behind by more than one month with submission of a declaration or payment of the tax in question;
4. failure to pay the tax withheld or collected to the Revenue authorities.

The administrative procedure for closure of the business shall be set down in the Regulations implementing this Law.

The preceding provisions shall apply to income tax and the selective consumption tax.

In the case of income tax, if there is no establishment the only penalties applied shall be those according to the Code of Tax Rules and Procedures.

In any of the above situations, the closure of the establishment shall be indicated by official seals placed on doors, windows or other places in the business premises.

Any breakage, destruction or alteration of such seals induced or instigated by the tax-payer or its representatives, managers, members or staff shall constitute a tax breach.

In all cases of closure, the tax-payer must comply in full with its labour obligations to its employees and other social welfare obligations. Non-compliance shall be punishable in accordance with the applicable legislation."

"Article 20 bis. Penalty for breakage of seals. A fine of twenty-five thousand (¢ 25,000.00) to one hundred thousand colons (¢ 100,000.00) shall be incurred by any person breaking, destroying or altering the official seals on inducement by or at the instigation of the tax-payer, its representatives, managers, partners, or staff. Prosecution for such breaches shall be in accordance with the procedures laid down in Articles 148 ff. of the Code of Tax Rules and Procedures.

Article 27. The second paragraph of Article 29 of the Law on general sales tax, Law No. 6826, of 8 November 1982, and amendments thereto, is hereby modified to read as follows:

"Article 29. Obligations imposed by the regime. Vendors or service providers paying tax under the simplified regime so established shall be subject to all the rules and obligations incumbent on other tax-payers, as applicable.

As an exception to the preceding paragraph, tax-payers operating under the regime set down in Article 27 of this Law shall not be obliged to issue invoices for their sales, but shall be required to demand them from their suppliers."

Article 28. Replacement of stamps. The stamps created by the Laws listed below shall be replaced with revenue stamps for the same value. The proceeds shall be appropriated to the State Consolidated Fund.:

1. Police Stamp Law, Law No. 6594, of 6 August 1981;
2. Creation of Stamp for Assistance for Abandoned Children, Law No. 4320, of 28 January 1969 and amendments thereto;
3. Hospital Stamp Law, Law No. 2854, of 6 November 1961 and amendments thereto (in Article 3)."

The Executive, through the Ministry of Finance, shall determine the resources required for the operation of the institutions affected by this Article, in consultation with the institutions in question."

Article 29. Modification to the General Civil Aviation Law. The heading of Article 152 of the General Civil Aviation Law, Law No. 5150, of 14 May 1973, is hereby modified to read as follows:

"Article 152. To be granted international air transport service operating certificates, the enterprise must demonstrate compliance with the following requirements: ..."

Article 30. Repealed provisions. The following provisions are hereby repealed:

- (a) Article 15 (ch), the second paragraph of Article 20, and Articles 12 and 25 of the Income Tax Law, Law No. 7092, of 21 April 1988, and amendments thereto;
- (b) everything relating to the tax evidence and certificates referred to in Article 11 (5) of Law No. 1155 of 29 April 1950; in Article 7 c) of Law No. 14 of 2 December 1935; in Article 10 (ch) of Law No. 1922 of 5 August 1955 and amendments thereto, and in Article 48(a), (c) and (d) of Law No. 7293 of 31 March 1992, and to certificates for the awarding of rural housing land titles, Law No. 6154, amended by Law No. 6244 of 2 May 1978.

Article 31. Amendment of Article 8 of Law No. 7210. Article 28 of Law No. 7210, of 23 November 1990, is hereby amended to read as follows:

"Article 28. Once the executive resolution has been published, the beneficiary enterprise shall sign an operating contract with the Corporation; when that condition has been met, the benefits under the Regime shall take effect.

If the beneficiary enterprise has not signed an operating contract within three months of the publication of the executive resolution, the Corporation shall forward a final warning, granting an absolute compliance deadline of five business days. If that deadline expires and the enterprise has still not signed the contract, the granting of duty-free zone status shall lapse."

Article 32. Authorisation to enter into contracts. The Tax Administration shall be authorised to contract the services of authorised accountants, in accordance with the procedures laid down in the Administrative Contracts Law, to carry out tax audits.

Article 33. Penalties for public officials. Any public official of the Tax Administration committing the offence pursuant to Article 317 of the Criminal Code shall incur imprisonment for three to ten years.

Article 34. Regulatory provisions. Unless otherwise specified, the Executive shall issue Regulations implementing this Law within ninety days of publication.

#### ENTRY INTO FORCE

Article 35. Dates of entry into force. The provisions of this Law are public order provisions, and repeal any general or specific legal provisions to the contrary. Amendments of Article 2 of the Law, regarding penalties, shall come into force six months after publication, provided that the Ministry of Finance has complied with the following obligations:

- (a) Promulgation of general regulations on audits, tax management and collection;
- (b) publication of objective criteria for the selection of tax-payers for auditing;
- (c) implementation of a tax-payer information and education system or programme to familiarise tax-payers with the requirements of this Law.

The amendments referred to in Article 2 of this Law shall apply as from the financial year following their publication; Articles 4 and 5 of the Law shall apply as from the 1996 financial year; the remaining provisions of this Law shall apply from its publication.

Article 36. Authorisation of the Executive. The Executive is hereby authorised, acting by Decree, to publish the full text of the Code of Tax Rules and Procedures, Law No. 4755, of 3 May 1971, and amendments thereto, with a view to arranging and harmonising the structure and numbering of its provisions.

TRANSITIONAL CLAUSE I. The Supreme Court of Justice shall establish the judicial facilities referred to in Article 65 of the Code of Tax Rules and Procedures within six months of the entry into force of this Law.

TRANSITIONAL CLAUSE II. The Ministry of Finance, within a period of no more than one year, shall:

- (a) purge the Consolidated Register of Tax-payers;
- (b) validate the Integrated Tax Account.

TRANSITIONAL CLAUSE III. Unsubstantiated increases in assets or income submitted in the first income tax declaration following the entry into force of Article 1 of this Law shall not require justification of origin or provide the basis for the application of administrative or criminal penalties.

The provisions of this Law may not be applied to tax obligations for which events giving rise to the obligation occurred before the entry into force of this Law.

In the case of taxes for which payment is subject to submitting a sworn declaration, this Law shall be applied to events giving rise to obligations occurring as from the financial year following its entry into force.

As from the entry into force of this Law, payers of taxes administered by the Ministry of Finance shall have a period of three months to settle any pending tax obligations contracted prior to the entry into force of this Law, with full exemption from surcharges, penalties and interest.

TRANSITIONAL CLAUSE IV. The lapsing of status referred to in Article 28 of Law No. 7210, of 23 November 1990, shall not apply to enterprises which on the entry into force of this Law were already operating under the Duty-Free Zone Regime, irrespective of the date on which they signed the relevant operating contracts.

TRANSITIONAL CLAUSE V. The Tax Administration shall be empowered to terminate cases initiated prior to the entry into force of Article 1 of this Law regarding all of the tax breaches specified in the Code of Tax Rules and Procedures and the special laws in force at the time, by decision with supporting arguments, applicable to all tax-payers.

TRANSITIONAL CLAUSE VI. Any debts payable to the State originating from tax incurred in financial years before 1991 which are remitted to the Judicial Collections Office of the Directorate-General of Finance, with the exception of debts for which there is a final judgment or for which any of the grounds for interruption of the prescription have come into effect, are hereby cancelled.

(Amended by Law No. 7543 of 14 September 1995)

Legislative Assembly.—San José, on the thirty-first day of July, nineteen hundred and ninety-five.

For communication to the Executive

Antonio Alvarez Desanti, President.-- Alvaro Azofeifa Astúa, First Secretary.-- Manuel Ant. Barrantes Rodríguez, Second Secretary.

Given at the Presidency of the Republic, San José, on the first day of August, nineteen hundred and ninety-five.

For implementation and publication.

JOSE MARIA FIGUERES OLSEN.—Minister of Finance, Fernando Herrero Acosta. (one) C-1500.-- (44116).

"CORRECTION TO MATERIAL ERROR:

1. Having regard to the fact that since its approval in first hearing the Drafting Committee restructured the Articles of the Draft Law on Tax Procedures, such that the 12 Articles of the text were subdivided into 36 Articles;

2. that owing to that restructuring of the text, Article 1 of the Draft, which comprised all the amendments to the Code of Tax Rules and Procedures, was subdivided into Articles I and II of the Law;

the amendments to the system of penalties were included in Article 2 of the Law.

Article 2, which contained all the amendments to the Income Tax Law, was subdivided into Articles 12 to 19 of the Law.

Articles 4 and 5, relating to the replacement of stamps of minor significance, were combined into one Article, numbered as Article 28;

4. that the Legislative Plenary approved the Draft Law on Tax Procedures in accordance with the final text put forward by the Drafting Committee;

5. that Article 35 and Transitional Clauses III and V of the Law contain references to Articles 1, 2, 4 and 5, which should have been corrected as indicated when the text was restructured, but this correction was not made, resulting in a material error in the Law,

#### WHEREAS

in accordance with the General Principles of Law incorporated in the Legal Provisions in the Preliminary Title of the Civil Code and the General Public Administration Law, material errors can be corrected at any time, now therefore, the references to Articles contained in Article 35 and Transitional Clauses III and V of the Law on Tax Procedures are hereby corrected as follows:

Article 35:

"Article 1" shall now read "Article 2".

"Article 2" shall now read "Articles 12 to 19".

"Articles 4 and 5" shall now read "Article 28".

Transitional Clauses III and V.

"Article 1" shall now read "Articles 1 to 11".

For implementation accordingly.

Given at the Presidency of the Legislative Assembly, at two p.m. on the tenth day of August, nineteen hundred and ninety-five".

Antonio Alvarez Desanti, President--- Alvaro Azofeifa Astúa, First Secretary.-- Manuel Antonio Barrantes Rodríguez, Second Secretary.



**ESTABLISHMENT OF THE MINISTRY OF FOREIGN TRADE AND  
PROMOTORA DEL COMERCIO EXTERIOR DE COSTA RICA  
(COSTA RICA FOREIGN TRADE PROMOTION ORGANIZATION)**

**NO. 7638**

**THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF  
COSTA RICA HEREBY  
DECREES:**

**CHAPTER I  
Ministry of Foreign Trade**

**Article 1. Establishment**

The Ministry of Foreign Trade, with the acronym COMEX, is hereby established as an organ of the Executive.

**Article 2. Functions**

The functions of the Ministry of Foreign Trade shall be as follows:

- (a) To formulate and direct foreign trade and foreign investment policy, including policy relating to Central America. To this end, the Ministry of Foreign Trade shall establish coordination mechanisms with the Ministry of External Relations and Religion and the ministries and public entities with legal competence regarding the production and marketing of goods and the provision of services in Costa Rica;
- (b) to direct bilateral and multilateral trade and investment negotiations, including in relation to Central America, and to sign treaties and conventions on these matters.

The Executive may issue administrative decisions authorising the signing of treaties and conventions and modifications thereto by the heads of other ministries or State public entities with specific legal competence for the subject matter of the treaty or convention in question;

- (c) to participate, with the Ministry of the Economy, Industry and Trade, the Ministry of Agriculture and the Ministry of Finance in the formulation of tariff policy;
- (d) to represent the country in the World Trade Organization and other international discussion fora on treaties, conventions and the issues of trade and investment in general;
- (e) to establish export regulation mechanisms, where necessary by placing restrictions on the entry of Costa Rica goods into other countries. In such cases, the regulations must include supporting arguments, and be clear, equitable and non-discriminatory. For the implementation of the mechanisms, the Ministry of Foreign Trade may call on the assistance of the Ministry of the Economy, Industry and Trade and the Ministry of Agriculture, as applicable; it may also implement the mechanisms through any other public-sector or private-sector entities related to the relevant production sector. Those institutions may levy users for the services provided;
- (f) to determine, in consultation with the Ministry of External Relations and Religion and the Ministers in charge of national production, any trade reprisals arising from international agreements signed by Costa Rica, to be implemented in Costa Rica by

the competent bodies, in accordance with legal procedures and the subject matter in question;

- (g) to lay down policies relating to exports and investment;
- (h) to grant duty-free zone regime status, export contracts, and temporary admission or inward processing regime status, and where applicable revoke such status, in accordance with the provisions of this Law and other applicable laws and regulations;
- (i) to direct and coordinate official plans, strategies and programmes relating to exports and investment;
- (j) to evaluate foreign trade and investment policies at least once every two years. To this end, a mixed Committee for the evaluation of foreign trade and investment policy shall be formed, comprising one representative from the Ministry of Foreign Trade, one representative from the Ministry of Planning, two representatives from the private sector and two specialist researchers from public universities.

#### Article 3. Inter-institutional support

In accordance with the relevant laws, the Ministries relating to the production of specific products and the public-sector institutions related to specific services shall participate in the national administration and implementation of trade and investment treaties, conventions and instruments, in a manner consistent with the policies, guidelines and regulations issued by the Ministry of Foreign Trade in consultation with the said Ministries and institutions.

#### Article 4. Consultative Council of Foreign Trade

A Consultative Council on Foreign Trade is hereby established, to advise the Executive on the formulation of foreign trade and foreign investment policy, and to promote mechanisms or coordination and co-operation with the private sector for the effective implementation of those policies and international trade negotiations. It shall comprise the following members:

- (a) The Minister of Foreign Trade, who shall chair the meeting, to be replaced in his/her absence by the Deputy Minister;
- (b) the Minister of the Economy, Industry and Commerce, or in his/her absence, the Deputy Minister;
- (c) the Minister of Agriculture, or in his/her absence the Deputy Minister;
- (d) the Minister of External Relations and Religion or a representative of the Minister especially delegated for this purpose;
- (e) the Chairperson, or in their absence Deputy Chairperson appointed for this purpose, of each of the following bodies: Costa Rica Union of Private Enterprise Chambers and Associations (Unión Costarricense de Cámaras y Asociaciones de la Empresa Privada), Chamber of Industries, Chamber of Commerce, Chamber of Exporters and Chamber of Agriculture; they shall not be paid attendance fees;
- (f) two representatives of small and medium-sized producers and business operators, appointed by organizations of proven legitimate standing.

The Minister of Foreign Trade may coopt Ministers of other portfolios, representatives of other public-sector and private-sector organizations whose activity impacts on foreign trade and investment policies, or other persons involved in this issue, to attend meetings of the Council.

#### Article 5. Permanent Delegation to the World Trade Organization

The Permanent Delegation of Costa Rica to the World Trade Organization shall form part of the Ministry of Foreign Trade and be dependent on the Ministry in all respects. In order to provide it with the required allocation of positions and services, a special programme shall be created within the budget of the Ministry. The members of the Delegation shall be subject, as applicable, to the provisions of the Foreign Service Rules of the Republic, Law No. 3530, of 5 August 1965, in accordance with the Regulations issued by the Executive through the Ministry.

#### Article 6. Diplomats at other missions with responsibility for trade matters

Diplomats responsible for trade matters at other diplomatic missions shall continue to form part of the Ministry of External Relations and Religion, and shall be dependent on the Ministry in all administrative and budget respects. They shall be appointed primarily on the basis of their technical and professional skills and background of prior experience.

On trade and investment issues, they shall be subject to work programmes jointly approved by the Ministry of External Relations and Religion and the Ministry of Foreign Trade. Those two Ministries shall prepare such programmes, update them periodically, evaluate their implementation and outcomes. To that end, the said Ministries shall establish the coordination mechanisms required to ensure the proper performance of their functions. Communications on trade and investment matters from the diplomats in question shall be sent simultaneously to both Ministers.

### CHAPTER II

#### **Promotora del Comercio Exterior de Costa Rica (Costa Rica Foreign Trade Promotion Organization)**

#### Article 7. Creation

Promotora del Comercio Exterior de Costa Rica, the acronym for which is PROCOMER, is hereby established as a non-State public-sector entity.

#### Article 8. Objectives and functions

The objectives and functions of Promotora del Comercio Exterior de Costa Rica shall be as follows:

- (a) To design and coordinate programmes relating to exports and investment, on the basis of guidelines issued by the Executive. The implementation of such programmes shall be coordinated with non-profit making private-sector entities involved in the area of exports and investment;
- (b) to provide technical and financial support to the Ministry of Foreign Trade for the administration of special export regimes, and to promote and defend the trade interests of Costa Rica abroad;
- (c) to administer a single-desk system in the foreign trade area, to centralise and speed up import and export transactions. For this purpose, the public-sector institutions involved in such transactions shall be obliged to provide assistance to the Promotion Organization and nominate accredited representatives with sufficient decision-making

authority. Where applicable, those entities may delegate their powers, either temporarily or permanently, to the single-desk officials;

- (d) to monitor foreign trade statistics, in coordination with the competent institutions;
- (e) to administer assets on trust, and generally execute all contracts permitted by law, as required for the attainment of the objectives and functions of the Promotion Organization.

#### Article 9. Financing

Promotora del Comercio Exterior de Costa Rica shall finance its operations from the following resources:

- (a) An initial contribution from the State, consisting of the final assets following the winding up of Corporación de la Zona Franca de Exportación S.A. (Export Duty-Free Zone Corporation, public limited company) and Centro para la Promoción de las Exportaciones y de las Inversiones (Export and Investment Promotion Centre);
- (b) contribution from the export and import sectors, comprising the mandatory contributions specified in this Law, which shall be collected by the Promotion Organization, directly or indirectly via agreements with the banks in the National Banking System or with other public-sector or private-sector bodies. These contributions shall comprise the following:
  - (i) an amount to be set by the Executive by Decree, up to a maximum of the equivalent of three American dollars (US\$3.00) for each import and export Customs declaration,
  - (ii) the payment of a fee for the use of the duty-free zone regime by enterprises operating under the regime. That fee shall be set by executive decree, subject to the following maximum limits: export processing enterprises shall pay the equivalent of fifty cents of an American dollar, maximum, per square metre of industrial area under roof; other enterprises operating under the regime shall pay, as a maximum, the equivalent of zero point five zero per cent (0.50 per cent) of their total monthly sales. In any event, the monthly amount payable in this regard shall be not less than the equivalent of two hundred American dollars (US\$200.00);
- (c) the proceeds from credits, donations or legacies, subject to prior authorisation from the Board of Directors of the Promotion Organization.

#### Article 10. Board of Directors

Promotora del Comercio Exterior de Costa Rica shall be managed by a Board of Directors comprising the following nine members:

- (a) The Minister of Foreign Trade, who shall chair the Board, and in his/her absence the Deputy Minister;
- (b) three members freely appointed and dismissed by the Government Council, appointed for terms coinciding with the constitutional term of the President of the Republic;
- (c) the Chairperson, or in his/her absence the Deputy Chairperson, of each of the following organizations: Chamber of Industries, Chamber of Commerce, Chamber of Exporters and Chamber of Agriculture;

- (d) one representative from small and medium-sized exporters, appointed by the Government Council from a short-list submitted by the Costa Rica Union of Private Enterprise Chambers and Associations (Unión Costarricense de Cámaras y Asociaciones de la Empresa Privada). That representative shall hold office for the same term as specified in indent (b) of this Article.

Article 11. Functions of the Board of Directors. The functions of the Board of Directors shall be as follows:

- (a) To issue rules and regulations regarding the organization and operation of Promotora del Comercio Exterior de Costa Rica. The regulations on contracts entered into by the Promotion Organization shall not be subject to the procedures set down in the Administrative Contracts Law, Law No. 7494, of 2 May 1994, or to its implementing Regulations; they shall however be subject to general principles of the forming of contracts and the prohibitions set down in that Law;
- (b) to approve the annual budget and modifications thereto, as the basis for the expenditure of the Institution in question;
- (c) to appoint and dismiss the General Manager and internal auditor, by majority of at least two thirds of its members. For the dismissal of the internal auditor the Board must first obtain the opinion of the Auditor General of the Republic;
- (d) to delegate to committees made up of its members or officials of the Institution, the adoption of decisions with respect to areas within the purview of the Promotion Organization, in accordance with rules laid down by the Board;
- (e) to approve the creation of positions by a majority of at least two thirds of its members. The same qualified majority shall be required for the sale of assets of the Institution. The appointment, dismissal and employment conditions of the Promotion Organization shall be governed by the provisions of the Labour Code;
- (f) to contract the services of an external auditor, reporting to the Board, to carry out regular audits on the financial statements of the Promotion Organization. At the end of each financial year, the auditors shall submit a report to the Board of Directors providing an opinion, with supporting information, on the accounts and financial statements for the period ended, with any recommendations seen as appropriate. A copy of that report shall be sent to the Auditor General of the Republic for any legal actions required.

### **CHAPTER III**

#### **Final Provisions**

Article 12. Legal framework

Promotora del Comercio Exterior de Costa Rica shall not be subject to the following legal provisions:

- (a) Civil Service Rules, Law No. 1581, of 30 May 1953, and amendments thereto;
- (b) Articles 9 and 10 of the National Planning Law, Law No. 5525, of 2 May 1974;
- (c) Book II of the General Public Administration Law, Law No. 6227, of 2 May 1978;

- (d) Law creating the Budget Authority, Law No. 6821, of 19 October 1982;
- (e) Law on the financial equilibrium of the public sector for the 1984 year, Law No. 6955, of 24 February 1984;
- (f) Articles 18 and 20 of the Organic Law on the office of the Auditor-General of the Republic, Law No. 7428, of 7 September 1994;
- (g) regulations or guidelines based on the above Laws.

#### Article 13. Repealed provisions

The following provisions are hereby repealed:

- (a) Articles 2, 3, 6, 8, 9, 10, 28 and 29 of the Duty-Free Zone Regime Law, Law No. 7210, of 23 November 1990. In that Law and any other law or regulations, references to Corporación de la Zona Franca de Exportación (the Export Duty-Free Zone Corporation) shall be understood as referring to Promotora del Comercio Exterior de Costa Rica;
- (b) Law establishing Centro para la Promoción de las Exportaciones y de las Inversiones (the Export and Investment Promotion Centre), Law No. 4081, of 27 February 1968. In any law or regulations, references to Centro para la Promoción de las Exportaciones y de las Inversiones shall be understood as referring to the Promotion Organization;
- (c) Article 67 of the Income Tax Law, Law No. 7092, of 21 April 1988. The functions allocated to the Consejo Nacional de Inversiones (National Investment Council) in Articles 65 to 69 of that Law shall be understood as referring to the Ministry of Foreign Trade, without prejudice to the provisions of indent (b) of this Article and the assistance activities to be carried out by the Promotion Organization, in accordance with the provisions of this Law.

Transitional Clause I. The term of office of the first members of the Board of Directors of Promotora del Comercio Exterior de Costa Rica appointed in accordance with Article 10(b) shall run until 8 May 1998. Subsequent appointments after that date shall be for a term of office coinciding with the constitutional term of the President of the Republic.

Transitional Clause II. As from the entry into force of this Law, Promotora del Comercio Exterior de Costa Rica shall have a period of three months to perform and document the transfer in its favour of the assets, liabilities and equity capital of Centro para la Promoción de las Exportaciones y de las Inversiones and Corporación de la Zona Franca de Exportación.

Transitional Clause III. The staff of Centro para la Promoción de las Exportaciones y de las Inversiones and of Corporación de la Zona Franca de Exportación who have being paid their employment-related entitlements on the closure of those institutions referred to in this Law may be employed by Promotora del Comercio Exterior de Costa Rica without application in their regard of the prohibition under Article 27 of the Law on the financial equilibrium of the public sector for the 1984 year, Law No. 6955, of 24 February 1984, and without prejudice to their being credited for their previous period of service for the payment of future legal benefits in the event of their re-employment, in cases where the relevant labour-related entitlements have not been paid out.

Transitional clause IV. The Tax Administration shall transfer to Corporación de la Zona Franca de Exportación, S. A. and Centro para la Promoción de las Exportaciones y de las Inversiones the full amounts for the Ordinary Budget items solely for the 1996 financial year.

To apply as from publication.

Legislative Assembly, San José, on the third day of October, nineteen hundred and ninety-six.

For communication to the Executive

Víctor Julio Brenes Rojas  
DEPUTY PRESIDENT, FOR THE PRESIDENCY

Gerardo Humberto Fuentes	González María Luisa Ortiz Messeguer
SECOND SECRETARY	FIRST SECRETARY

Given at the Presidency of the Republic, San José, on the thirtieth day of October, nineteen hundred and ninety-six.

For implementation and publication

JOSE MARIA FIGUERES OLSEN.-Minister of Foreign Trade, José Rossi U. (one) -C-300.-(65367).

**REGULATIONS ON FOREIGN CURRENCY MANAGEMENT  
BY BENEFICIARIES OF THE DUTY-FREE ZONE REGIME CREATED BY LAW NO. 7210  
OF 14 DECEMBER 1990  
(DUTY-FREE ZONE REGIME LAW)**

**NO. 4924**

**CHAPTER I**

**Definitions and scope**

Article 1. The following definitions of terms apply for the purposes of these Regulations:

- (a) "Regulations on Foreign Exchange Operations" means the Regulations implementing the Foreign Exchange Regime laid down by Banco Central de Costa Rica;
- (b) "Law" means the Duty-Free Zone Regime Law, Law No. 7210, of 14 December 1990;
- (c) "Beneficiary" means a natural or legal person with Duty-Free Zone Regime status;
- (d) "Corporation" means Corporación de la Zona Franca de Exportación, S.A. (Export Duty-Free Zone Corporation, public limited company).

Article 2. In accordance with the provisions of Article 20(j) of the Law, the transactions and contracts concluded in foreign currency between beneficiaries, between beneficiaries and the Corporation, or those relating to their international transactions or any transaction deriving therefrom shall be exempt from application of the Regulations on Foreign Exchange Operations.

**CHAPTER II**

**Utilization and management of foreign currency**

Article 3. The beneficiaries and the Corporation shall be entitled to hold and manage foreign currency acquired from the transactions referred to in Article 2 above and foreign currency arising from their normal activities as they see fit, and accordingly shall not be required to clear foreign currency at any of the authorized entities or declare the entry into Costa Rica of foreign currency received from the transactions referred to.

Article 4. Transactions, contracts and obligations in foreign currency shall be valid, effective and collectible, but may be paid, at the debtor's discretion, in colons, calculated at the current cash market rate of the foreign currency owed on the date of payment. The "current cash market rate" means the average exchange rate calculated by Banco Central de Costa Rica for foreign exchange market transactions.

Article 5. Export or import transactions carried out by natural or legal persons based in the national Customs territory subject to Duty-Free Zone Regime rules with Beneficiaries or the Corporation in accordance with Articles 22 and 23 of the Law shall remain subject to the provisions of the current text of the Regulations on Foreign Exchange Operations.



## **CHAPTER II**

### **Utilization and management of foreign currency**

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Article 5. Export or import transactions carried out by natural or legal persons based in the national Customs territory subject to Duty-Free Zone Regime rules with Beneficiaries or the Corporation in accordance with Articles 22 and 23 of the Law shall remain subject to the provisions of the current text of the Regulations on Foreign Exchange Operations.

## **CHAPTER III**

### **Final Provisions**

Article 6. Foreign exchange trading in the national territory shall be carried out via the Central Bank (*Banco Central*), financial entities under supervision of the Financial Entity Regulatory Authority (*Superintendencia General de Entidades Financieras*) and other entities as authorized by the Board of Directors of Banco Central de Costa Rica.

Article 7. Any breach of the provisions of these Regulations shall incur application of the penalties set down in Articles 31 and 32, and in the Organic Law of Banco Central de Costa Rica.

Article 8. These Regulations repeal the previous regulations, and enter into force on their publication in the official gazette, *La Gaceta*.

With respect,

Lic. Jorge Monge Bonilla, Acting Secretary General (one) - (O.P. 34792) – C 5050 – (5855)

The Board of Directors of Banco Central de Costa Rica, pursuant to Article 5 No. (1), according to the record of meeting No. 4920-97, held on 13 August 1997, resolved as follows:

### **Regulations on Foreign Exchange Operations**

#### **CHAPTER I**

#### **General provisions**

##### **Article 1. Purpose**

The purpose of these Regulations is to set down the rules governing foreign currency transactions on the Foreign Exchange Market in the national territory, in accordance with the provisions of the Organic Law of Banco Central de Costa Rica, Law No. 7558, of 27 November 1995.

## **CHAPTER II**

### **The activity of intermediaries on the Foreign Exchange Market**

The following may participate, for their own account and risk, in the Foreign Exchange Market: financial entities registered with and monitored by the Financial Entity Regulatory Authority (SUGEF) and the traders of the National Securities Exchange (BNV) and Electronic Securities Exchange (BEVCR), on behalf and on the instructions of exporters, importers and other foreign currency traders, under the terms and conditions set out in Chapter VI of these Regulations.

Any other entities or enterprises authorized by the Board of Directors of Banco Central de Costa Rica to participate in the Foreign Exchange market must meet the following requirements:

- (a) Submission of a written application for participation in the foreign exchange market to SUGEF, which shall issue [a recommendation] to the Board of Directors, [and] may seek any financial or other information required from the parties concerned;
- (b) acceptance of supervisory arrangements specified by SUGEF to verify compliance with the provisions of the foreign exchange regulations;
- (c) participation solely as a Foreign Exchange House, according to the terms and conditions laid down in Article VII of these Regulations.

All entities authorized to participate in the Foreign Exchange Market must operate an accounting system allowing the identification of Foreign Exchange Market transactions in accordance with requirements laid down by the relevant regulatory authority.

SUGEF shall include the required items for this purpose in its list of accounts, as applicable.

#### **Article 3. Reference Exchange Rate**

Banco de Costa Rica shall calculate buying and selling Reference Exchange Rates on a daily basis, to be used as applicable for all purposes as set down in laws, regulations, rules and general provisions.

The buying and selling reference exchange rates for each day shall be calculated by Banco Central de Costa Rica on the basis of a weighted average of the buy and sell exchange transactions carried out by one of the authorized entities on the last business day but one, adjusted by the variation in the average exchange rate in the MONED system for the previous day. These shall be based on the weighted averages of the buying and selling exchange rates respectively for all foreign currency transactions with the public.

#### **Article 4. Foreign Exchange Intermediary's Margin**

The foreign currency intermediary's margin, defined as the difference between the buying and selling rates, shall be determined by the entities authorized to participate in the Foreign Exchange Market.

In accordance with Article 97 of the Organic Law of Banco Central de Costa Rica, for each dollar sold the authorized entities must transfer, by no later than the following business day, 15 per cent of the weighted average foreign exchange intermediary's margin for the total transactions performed by each of the entities during the day. The vendor entity shall be entitled to the remainder.

Article 5. The entities authorized to participate in the Foreign Exchange Market shall be required to provide Banco Central de Costa Rica with the following information on their foreign exchange operations:

- (A) A daily report, in accordance with instructions forwarded by Banco Central de Costa Rica, on the amounts, in local currency and foreign currencies, of purchases and sales of foreign currency concluded on the Foreign Exchange Market, according to specified format and breakdown requirements and on the specified media;
- (B) daily calculation and report of its authorized and actual foreign currency positions, with the exception of entities or enterprises participating on behalf and at the instructions of exporters, importers and other foreign currency traders;
- (C) daily notification via the electronic system available or any other medium accepted by Banco Central de Costa Rica on the opening and closing buy and sell exchange rates for the public for the day in question.

#### Article 6. Rules on the Authorized Foreign Currency Position

The authorized foreign currency position, defined as the difference between total assets and total liabilities in foreign currency, may fluctuate between zero and one hundred per cent of the Equity Capital of the entity authorized to participate in the foreign exchange market. The Equity Capital value shall be provided by SUGEF. The calculation of the authorized foreign currency position shall be based on the end-of-month buy exchange rate as determined by each entity.

The authorized foreign currency position may be changed automatically by operations not relating to the foreign exchange market, such as interest and commissions paid and received, the payment or retention of dividends, losses on bad debts, capital contributions and changes arising from fluctuations in exchange rates with the dollar, provided that the authorized foreign currency position remains within the range specified in the preceding paragraph. The entities must notify SUGEF and the Management Unit of the Central Bank, by no later than the following business day, of changes in the authorized foreign currency position resulting from these factors.

The authorized foreign currency position may change each day on the basis of foreign exchange transactions by up to a maximum margin of one per cent (1 per cent) with respect to the balance for the previous day.

#### Article 67. Audits

SUGEF shall audit – either directly or through another entity expressly authorized by it to this end – the transactions of financial entities, traders and other entities or enterprises participating in the foreign exchange market, and verify compliance with the Law and these Regulations; to this end it may carry out inspections as it deems appropriate, and may demand any reports required.

### **CHAPTER III**

#### **Transactions with other currencies**

#### Article 8. Authorization to trade in other currencies

Authorized entities may buy and sell on their own account and at their own risk all currencies other than that of the United States of America, in exchange for Costa Rica colons, in strict accordance with the provisions of these Regulations. Each authorized entity may charge the customer the commission it regards as appropriate for each transaction.

#### Article 9. Purchase of currencies by Banco Central de Costa Rica

Banco Central de Costa Rica may purchase notes and traveller's cheques in the following currencies from entities so requesting:

Pound sterling, French franc, Swiss franc, German mark, Netherlands guilder, Canadian dollar, Japanese yen.

The exchange rate used for this purpose shall be the rate set by Banco Central de Costa Rica for the day on which the transaction is carried out. The financial entity must report, on media as specified by Banco Central de Costa Rica, the currencies and the amounts in notes and traveller's cheques. On the same day as the settlement payment is received, Banco Central de Costa Rica shall pay the entity in question the equivalent in colons, by crediting its current account at Banco Central de Costa Rica.

#### Article 10. Conversion reference

Entities wishing to sell Banco Central de Costa Rica the currencies referred to in Article 8 must apply the exchange rates for those currencies against the United States dollar, which shall be provided each day by Banco Central de Costa Rica. The conversion to colons shall be carried out at the reference exchange rate on the day of the transaction.

### **CHAPTER IV**

#### **Exports and other incoming foreign currency**

#### Article 11. Incoming foreign currency and reporting requirements

Pursuant to Article 91 of the Organic Law of Banco Central de Costa Rica, any natural or legal person obtaining foreign currency from the export of goods, services or tourism, must pay the funds into one of the authorized entities or provide evidence of the entry of the funds into the country to Banco Central de Costa Rica within 90 days, at the end of the financial year, or by an earlier date if so specified by Banco Central de Costa Rica.

Exporters must submit a report, duly certified by a public account, on the exports carried out, and the foreign currency paid in or received in this context. To this end, Banco Central de Costa Rica shall issue instructions setting down the essential reporting requirements and the procedure to be followed in such cases.

For the purposes of this Article, exporters may pay in the foreign currency according to one of the following procedures:

- (a) An exporter is in fact complying with the requirements of Article 91 of the Organic Law of Banco Central de Costa Rica, Law No. 7588, and not in breach of Article 92 of that same Law, if it submits a certificate from an Authorized Public Accountant, or other reliable evidence, stating that the foreign currency has been sold to an entity authorized to operate on the foreign exchange market, on the basis that this can be regarded as constituting receipt of the funds in the records of the exporter for legal, accounting and practical purposes, in the case of Costa Rican natural or legal persons who are duly registered, operating, and with business and tax domicile in Costa Rica, as criteria subject to ratification by the Central Bank or its authorized agents at any time;

## **CHAPTER V**

### **Public Sector foreign currency transactions**

#### **Article 12. Purchase and sale of foreign currency in the Public Sector**

Non-banking public-sector institutions shall carry out their transactions for the purchase or sale of foreign currency through any of the State commercial banks, at the reference exchange rates for the day in question.

For such transactions, the State commercial banks, by no later than the next business day, shall transfer the foreign currency purchased to Banco Central de Costa Rica, and request the refund of foreign currency sold from the Central Bank, which shall carry out the transaction at the same exchange rate as that applied by the State commercial bank.

Banco Central de Costa Rica may authorize and stipulate the limits within which Public Sector entities may hold foreign currency in situations where this is fully justified.

#### **Article 13. Foreign currency from borrowing**

The procedures followed with foreign currency originating from foreign borrowing and the requirements for the service of the external debt shall be as per the terms and conditions set down in the Regulations on the Registration and Monitoring of the External Debt of Costa Rica Public Sector institutions.

## **CHAPTER VI**

### **Rules for the operation of securities exchange traders on behalf of third parties**

#### **Article 14. Purpose**

The purpose of this chapter is to lay down operating rules and list the requirements to be met by Securities Exchange Traders in accordance with the provisions of this Law and Article 2 of these Regulations.

#### **Article 15. Securities Exchange Traders**

Only traders of the National Securities Exchange (BNV) and the Costa Rica Electronic Securities Exchange (BEVCR) may operate on the foreign exchange market on behalf of third parties.

#### **Article 16. Authorization**

Traders meeting the requirements under the preceding Article must apply in writing to SUGEF for authorization to participate in the Foreign Exchange Market. For this purpose, SUGEF may ask the applicant to provide any financial and other information required. Securities Exchange traders must indicate their willingness to accept auditing and supervision by SUGEF, or by an entity expressly authorized by SUGEF, with respect to the transactions they carry out.

#### **Article 17. Additional requirements**

To operate on the Foreign Exchange Market, Securities Exchange traders must also meet the following requirements:

- (a) Lodgement of a guarantee in the form of ownership securities or Monetary Stabilisation Bonds with a market value of 5,000,000.00 colons, to be deposited with Banco Central de Costa Rica. The value of the securities shall be determined according to the most recent market prices at a securities exchange authorized to trade in this type of asset, on the understanding that if the price of the securities so lodged falls, or if an increase in the guarantee amount is required, it shall be the obligation of the guarantor to top up the guarantee to the required value. The amount of the guarantee shall be reviewed and if applicable increased by SUGEF according to the volume of foreign exchange transactions, by no later than during the first six months of operation, and after the end of each calendar year. The said guarantee shall cover any loss or damage caused by Securities Exchange Traders to third parties in the course of their transactions, as determined by the competent judicial authority. The guarantee lodged shall be held at Banco Central de Costa Rica, wherever this is consistent with the form of the guarantee;
- (b) sufficient facilities for satisfactory operation;
- (c) permanent display in a clearly visible manner of the following:
  - (i) SUGEF approval to operate in the Foreign Exchange Market
  - (ii) prices offered for the purchase and sale of foreign currencies
  - (iii) rules issued by Banco Central de Costa Rica regarding foreign exchange operations;
- (d) clear indication on its stationery of its status as a Securities Exchange Trader, with its trading name.

#### Article 18. Information to be provided by Traders Desks of the BNV and the BEVCR

Securities exchange traders notifying SUGEF of their intention to participate in the foreign exchange market on behalf of third parties must meet the requirements for the provision of information laid down in Article 5, a and c of these Regulations.

#### Article 19. Auditing

SUGEF shall audit – either directly or through another entity expressly authorized by it to this end – the foreign exchange operations of Securities Exchange Traders, and verify compliance with the Law [and] these Regulations; to this end it may carry out such inspections as it deems appropriate, and may demand any reports required.

### **CHAPTER VII**

#### **Rules for the operation of foreign exchange houses**

#### Article 20. Purpose

The purpose of this chapter is to set down the rules to be observed by Foreign Exchange Houses in accordance with the provisions of the Law and Article 2 of these Regulations.

## Article 21. Foreign Exchange Houses

The only parties permitted to operate as a foreign exchange house are Commercial Companies formed for this purpose, and expressly stating in its Articles of Association that its sole corporate purpose is to be the purchase and sale of foreign currency in notes, bank drafts, traveller's cheques and other instruments of payment in foreign currency.

A company of this type must clearly state "Foreign Exchange House" as part of its trading name.

## Article 22. Authorization

- (a) Commercial companies constituted in accordance with the preceding Article must apply in writing to SUGEF for authorization to participate in the Foreign Exchange Market. SUGEF shall forward its recommendation on the matter to the board of directors of Banco Central de Costa Rica, to allow the Board to make the appropriate decision. To this end, SUGEF may ask the applicants to provide any financial and other information required. The said companies must indicate their willingness to accept auditing and supervision by SUGEF.

## Article 23. Additional requirements

To operate on the Foreign Exchange Market, Foreign Exchange Houses must also meet the following requirements:

- (a) On the establishment of the company, the members must contribute a minimum company capital of ¢10,000,000 (ten million colons)
- (b) lodgement of a guarantee in the form of Ownership Securities or Monetary Stabilisation Bonds with a market value of ¢30,000,000 (thirty million colons), to be deposited with Banco Central de Costa Rica. The value of the securities shall be determined according to the most recent market prices at the securities exchange authorized to trade in this type of asset, on the understanding that if the price of the securities so lodged falls, or if an increase in the guarantee amount is required, it shall be the obligation of the guarantor to top up the guarantee to the required value. The amount of the guarantee shall be reviewed and if applicable increased by SUGEF according to the volume of foreign exchange transactions, by no later than during the first six months of operation, and after the end of each calendar year.

The said guarantee shall cover any loss or damage caused by Foreign Exchange Houses to third parties in the context of their transactions, as determined by the competent judicial authority. The guarantee lodged shall be held at Banco Central de Costa Rica, where this is consistent with the form of the guarantee.

In the event of a Foreign Exchange House ceasing to provide services to the public by its own decision or on the basis of administrative or judicial proceedings, the guarantee lodged shall remain valid for a period of not less than six months;

- (c) to submit and update information regarding the reputation, solvency and experience of each company member and member of the Board of Directors and executives, comprising the following:
  - (i) name, position held, ID number and permanent address;

- (ii) certificate issued by the competent authority stating that there are no criminal convictions against the person in question;
  - (iii) commercial bank references;
- (d) arrange national publication of a notice allowing objections against the decision to be heard before the Board of Directors of the Central Bank in order for it to arrive at a better decision, to be submitted within a period of ten calendar days following the publication of the notice;
- (e) availability of suitable facilities for its satisfactory operation;
- (f) permanent display in a clearly visible manner of the following:
  - (i) sign on the outside of the premises to the effect that the establishment is a "Foreign Exchange House";
  - (ii) authorization to operate on the Foreign Exchange Market;
  - (iii) prices offered for the purchase and sale of foreign currencies
  - (iv) rules issued by Banco Central de Costa Rica;
- (g) clear indication on its stationery of its status as a Foreign Exchange House.

#### Article 24. Basis of participation

Foreign exchange houses shall participate on the Foreign Exchange Market for their own account and risk.

#### Article 25. Rules on the Authorized Foreign Currency Position

The authorized foreign currency position of foreign exchange houses may fluctuate between zero and one hundred per cent of the amount of the guarantee required, whose amount shall be advised by SUGEF. The authorized foreign currency position may vary each day by up to one per cent (1 per cent) of the balance for the previous day.

#### Article 26. Information to be provided by Foreign Exchange Houses

Foreign Exchange Houses shall be subject to the same information reporting obligations as other entities authorized to operate on the Foreign Exchange Market, in accordance with the provisions of Article 5 of these Regulations.

#### Article 27. Auditing

SUGEF shall audit – either directly or through another entity expressly authorized to this end – the operations of Foreign Exchange Houses, and verify compliance with the Law and these Regulations; to this end it may carry out such inspections as it deems appropriate, and may demand any reports required.



## **CHAPTER VIII**

### **Penalties**

#### **Article 28. Penalties**

Breaches of the Organic Law of Banco Central de Costa Rica and these Regulations shall incur penalties in accordance with the provisions of Articles 92, 93, 156 and other provisions in accordance therewith, without prejudice to other civil and criminal penalties as applicable.

#### **Entry into force and repealed provisions**

These Regulations shall enter into force as from their publication in the Official Gazette, "*La Gaceta*", and repeal the Regulations on Foreign Currency Operations approved by the Board of Directors of the Central Bank at meeting 4848-95 Article 6, held on 15 December 1995, and amendments thereto (4864-96 Article 8 of 13 March 1996; 4868-96 Article 7, No. 1 of 24 April 1996, and 4898-96 Article 7 of 13 November 1996), and any other provisions laid down by this authority in relation to foreign exchange which are in conflict with the provisions of these Regulations.

**AMENDMENTS TO THE DUTY-FREE ZONE REGIME LAW**  
**THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF COSTA RICA**

**NO. 7830**

**AMENDMENTS TO THE DUTY-FREE ZONE REGIME LAW**  
**THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF COSTA RICA**

hereby DECREES as follows:

Article 1. The Duty-Free Zone Regime Law, Law No. 7210, of 23 November 1990 is hereby amended as follows:

(a) Article 1 shall now read as follows:

"Article 1. The Duty-Free Zone Regime is the set of incentives and benefits offered by the State to enterprises making new investments in the country, subject to compliance with other requirements and the obligations laid down in this Law and its implementing regulations. The regulations will set out the definition of new investments in the country. The enterprises operating as beneficiaries of this Regime must be engaged in the manipulation, processing, manufacture, production, repair or maintenance of goods and the provision of services intended for export or re-export, except as specified in Articles 22 and 24 of this Law. The establishment location of a group of enterprises operating as beneficiaries of this Regime shall be referred to as a "duty-free zone", and shall be a defined area, without a resident population, which is authorized by the Executive to operate in that capacity. Duty-Free Zone Regime status shall be granted only to enterprises with projects involving an initial new investment in fixed assets of at least one hundred and fifty thousand US dollars (US\$150,000.00) or the equivalent in local currency.

Small enterprises forming consortia for joint participation in directly carrying out processing activities for export may meet the minimum investment amount requirement stated in this Article by adding together the investment amount of each enterprise in the consortium, in accordance with the provisions of the implementing regulations of this Law. For this purpose, a "small enterprise" means an enterprise employing no more than twenty staff.

To qualify for Duty-Free Zone Regime status, enterprises must meet all environmental protection standards laid down in Costa Rica legislation and international law for the performance of economic activities in a sustainable manner."

(b) Article 4(c) shall now read as follows:

Article 4 "

[...]

(c) as an exceptional and temporary measure, to take over the administration of duty-free zones in situations where Duty-Free Zone Regime status of an administration enterprise has been suspended or revoked."

(c) The first paragraph of Article 13 shall now read as follows:

"Article 13.

The areas where enterprises covered by the Duty-Free Zone Regime are located shall be declared as Primary Customs Zones.

[...]"

(d) Article 16 shall now read as follows:

The scrap, by-products and waste thrown away by enterprises covered by the Duty-Free Zone Regime shall be owned primarily by the municipality in which the enterprises are based, provided that the material can be treated locally or nationally without endangering the population; in this situation, the municipalities shall be permitted to sell the material directly. If the waste, by-products and scrap cannot be treated locally or nationally, it shall be the responsibility of the enterprise to arrange suitable treatment.

If any party producing or selling goods similar to those thrown away by enterprises covered by the Duty-Free Zone Regime believes the manner in which the waste, by-products and scrap is being managed by the municipality is encroaching on its interests, it may lodge a complaint with the Ministry of the Economy, Industry and Trade. The Ministry shall rule in favour of the complainant if it is found to be clearly disadvantaged. The Ministry of the Economy, Industry and Trade shall issue regulations laying down the procedure to be followed for the resolution of such disputes."

(e) The first paragraph of Article 17 and indents (c) and (ch) thereof, shall now read as follows:

Article 17. Enterprises covered by the Duty-Free Zone Regime are classified as follows:

[...1

(c) service industries and enterprises which export services to natural or legal persons domiciled abroad, or provide the services to companies which are beneficiaries of the Duty-Free Zone Regime, in the latter case provided that the services are directly related to the production process of the companies which are beneficiaries of the Duty-Free Zone Regime;

Banking, financial and insurance entities based in duty-free zones do not qualify for the benefits of this Regime. Neither do natural or legal persons engaged in providing professional services qualify for the Regime.

(ch) enterprises administering industrial parks intended for occupation by enterprises operating under the Duty-Free Zone Regime, provided that the parks meet the minimum conditions in terms of infrastructure and the availability of services as set out in the regulations implementing this Law. Such enterprises shall qualify for the exemptions specified in Article 20, provided that the industrial park developed by them is occupied solely by enterprises covered by the Duty-Free Zone Regime. If enterprises not covered by the Duty-Free Zone Regime set up in the park, the administrator shall forfeit the exemption referred to in Article 20(g) from that time, and the other exemptions shall be reduced on a pro rata basis, in the same way as in the case of sales in the national Customs territory pursuant to Article 22.

(f) Article 18(ch) shall now read as follows:

"Article 18.

- (ch) in exceptional cases, and only where the characteristics of the production process or nature of the project prevent the activity being carried out within an industrial park, Duty-Free Zone Regime status may be granted to export processing enterprises, such that they are permitted to base their operations outside an industrial park, provided that the initial fixed asset investment is at least two million United States dollars (US\$2,000,000.00) or the equivalent in local currency, and subject to compliance with other regulatory requirements. For the granting of Duty-Free Zone Regime status outside an industrial park, the Ministry of Foreign Trade must have received a favourable assessment from the Ministry of Finance, which is required to pronounce on the matter within 15 business days of receiving the copy of the application in question. If no response has been received by the end of that time-limit, the assessment of the Ministry of Finance shall be deemed to be favourable.

Similarly, in exceptional cases, for reasons of the availability of workers, transport or raw material handling capacity, or for another reason, confirmed by regulation and prior express authorization from PROCOMER, enterprises covered by the Duty-Free Zone Regime which are located in an industrial park may set up satellite plants outside the zone, which shall be incorporated under the terms and conditions of the Executive Decision authorizing the enterprise to operate in this manner. The plant based within the park must carry out a significant proportion of the total production in relation to the number of plants based outside the park, and must comply with the requirements laid down by PROCOMER in this regard. In addition, all imports of raw materials, machinery and other items, and the export of the final product, must be arranged from the plant located within the industrial park, except in special cases duly authorized by PROCOMER.

Duty-Free Zone Regime status may not be granted in the two situations referred to in the preceding paragraphs if the enterprises in question do not have the relevant tax and Customs supervision arrangements in place."

- (g) Article 19(d) shall now read as follows:

"Article 19.

- (d) to provide reports on levels of employment, investment, domestic value added or other reports as specified in the Executive Decision granting Regime status. Compliance with this obligation shall be an essential requirement for receiving the incentives under this Law.
- (h) The first paragraph of Article 20, indent (c), indent (g) and the first paragraph of indent (k) shall now read as follows:

Enterprises operating under the Duty-Free Zone regime shall receive the following incentives, with the exceptions indicated below:

1...]

- (c) exemption from all tax and consular fees payable on imports of fuel, oil and lubricants required for the operation of the enterprises. This exemption shall be granted solely where these goods are not produced within the country with the required quality, quantity and timeliness. For imports of these items, the Ministry of the Economy, Industry and Trade must grant prior authorisation, giving a ruling with statement of reasons within a maximum deadline of 15 business days.

- (g) exemption from all taxes on profits, and any other taxes for which the tax base is determined according to gross or net earnings, dividends paid to shareholders, or revenue or sales, according to the following distinctions:

1. For enterprises based in "relatively more developed areas", the exemption shall be one hundred per cent (100 per cent) for a period of up to eight years, and fifty per cent (50 per cent) for the following four years.

2. For enterprises based in "relatively less developed areas", the exemption shall be one hundred per cent for a period of up to 12 years, and fifty per cent (50 per cent) for the following six years.

The durations shall be calculated from the starting date of the production operations of the beneficiary enterprise, provided that that date is no more than two years after the publication of the relevant executive decision.

The exemptions referred to in this paragraph shall not apply where the prospective beneficiary is entitled to discount in its country of origin the taxes exempted in Costa Rica.

In the definition of "relatively more developed and less developed zones", the Corporation shall have regard to the rules laid down by the Ministry of National Planning and Economic Policy for this purpose.

[".1

- (k) enterprises based in duty-free zones located in "relatively less developed" zones according to the classification applied by the Ministry of Foreign Trade, with prior report from the Ministry of National Planning and Economic Policy, shall be entitled to receive a credit equal to ten per cent (10 per cent) of the amount paid as wages and salaries during the previous year, after deduction of the amount paid to the Costa Rica Social Welfare Fund on those wages and salaries, in accordance with the payroll reported to the Fund. These enterprises may apply for coverage under this Law within five years after the entry into force of the provisions of this paragraph. The entitlement shall be granted for five years, and shall decrease by two percentage points, through to its termination in the last year. This credit shall be charged against the national budget in the manner laid down in the regulations implementing this law.

[...1"

- (l) Article 22 shall now read as follows:

Article 22 . Enterprises covered by the Duty-Free Zone Regime, except for those referred to in Article 17(b), may bring up to twenty-five per cent (25 per cent) of their total sales into the national Customs territory, subject to compliance with the requirements set down in the regulations implementing this Law. In the case of the enterprises referred to in Article 17(c) the maximum percentage shall be fifty per cent (50 per cent).

The goods and services placed on the national domestic market shall be subject to the taxes and Customs procedures applicable to any similar import from abroad. In addition, the percentage of exemptions from taxes for the import of machinery, equipment and raw materials and taxes on profits shall be reduced by the proportion corresponding to the ratio of the goods and services brought into the national Customs territory to the total value of the sales and services of the enterprise in question, pursuant to the regulations implementing this Law."

(j) Article 32 shall now read as follows:

"Article 32.

The Ministry of Foreign Trade may impose a fine of up to 300 times the basic wage, as defined in Article 2 of Law No. 7337 of 5 May 1993, suspend for a period of between one month and one year one or more of the incentives referred to in Article 20, or withdraw Duty-Free Zone Regime status, without liability on the part of the State, for any beneficiary enterprise which has committed any of the following breaches:

- (a) Provision of false information in its application for coverage under the Regime;
- (b) initiating operations outside the period set down in the Executive Resolution;
- (c) failure to comply with the levels of new investment, employment, domestic value added or other obligations laid down in the relevant Executive Resolution;
- (d) failure to submit the annual activity report and any other reports requested by PROCOMER to the Ministry of Foreign Trade within the stated deadlines. Failure to submit the annual report within the deadline set down for this purpose shall incur the automatic suspension of all Regime benefits until such time as the report has been submitted in full;
- [(e)] making sales on the domestic market without complying with the requirements set down in Article 22 of this Law;
- (f) failing to pay the fee for application of the Regime by the due date;
- (g) failure to lodge the guarantee deposit required under this Law, or to renew it prior to its expiry date;
- (h) ceasing its operations or abandoning its facilities without obtaining prior authorization in the manner set down in the regulations implementing this Law;
- (i) penalties imposed by a final administrative ruling on the enterprise, its shareholders, directors, employees or representatives, in connection with the company's activities,, for having committed administrative, Customs, tax or Customs duty offences. In this situation, the imposition of a fine shall be replaced by withdrawal of Regime status in the case of breaches which are of a serious or repeated nature in the assessment of the Ministry of Foreign Trade;
- (j) conviction by final Court judgement of shareholders, directors, employees or representatives of the beneficiary enterprise in connection with the activities of the enterprise for having committed Customs or tax offences. In this situation, the imposition of a fine shall be replaced by withdrawal of Regime status in the cases of breaches which are of a serious or repeated nature in the assessment of the Ministry of Foreign Trade;
- (k) suspension of payments by the enterprise, declaration of enterprise as insolvent or bankrupt, initiation of composition with creditors or compulsory receivership by Court order;

- (l) any other failure to comply with its obligations under law, regulations and operating contracts;
- (m) disposal of waste, by-products and scrap in a manner failing to comply with the provisions of Article 16 of this Law and its implementing regulations;
- (n) use or disposal other than as specified in the relevant Executive Resolution of machinery, equipment, vehicles, raw materials, semi-manufactured products and any other items acquired by the enterprise under the incentives granted;
- (ñ) non-compliance by industrial park development enterprises with the safety and monitoring standards laid down in the regulations implementing this Law.

The determination of the penalty to be imposed shall have regard to the severity of the breach, the level of culpability or presence of malice on the part of employees or representatives of the enterprise, repeat offending, and, in the case of fines, the total revenue of the enterprise.

The Ministry of Foreign Trade may order the precautionary suspension of the incentives and benefits under this Law for a period of up to six months, during administrative proceedings or judicial investigations regarding the legality of the actions of a beneficiary enterprise under the Duty-Free Zone Regime, related enterprises, or their shareholders, directors, managers or representatives. Neither precautionary suspension nor the lifting of such suspension shall prejudice the final outcome of the relevant administrative proceedings or Court case.

The Ministry of Foreign Trade and the Ministry of Finance shall formulate the coordination mechanisms required for the fair and effective enforcement of supervisory measures and penalties on beneficiary enterprises under the Duty-Free Zone Regime.

The proceeds from the fines specified in this Article shall be distributed as follows: fifty per cent (50 per cent) to PROCOMER and fifty per cent (50 per cent) to the municipality in whose territory the beneficiary enterprise is located.

Following the imposition of the penalties under this Article, the party may lodge an application to have the ruling set aside, within five business days of notification of the ruling, after which all avenues of administrative recourse shall be deemed to have been exhausted.

A ruling imposing a fine shall be a valid basis for enforcement against the offending party, and PROCOMER shall be authorised to collect the amount payable."

Article 2. The following provisions are hereby added to the Duty-Free Zone Regime law, Law No. 7210, of 23 November 1990:

- (a) In Article 14, a second paragraph, reading as follows:

Article 14

[...]

Similarly, the said administrators shall provide the Ministry of Foreign Trade and PROCOMER with the facilities and assistance they require in order to carry out their functions in connection with enterprises operating as beneficiaries of the Duty-Free Zone Regime."

- (b) In Article 19, indents (e) and (f). Accordingly, the former indent (e) will now be indent (g). The text will now read as follows:

"Article 19.

(...1

- (e) to use the Customs declaration, seals and other instruments required under laws or regulations for the documentation and monitoring of its operations;
  - (f) for enterprises administering industrial parks and enterprises granted Duty-Free Zone Regime status outside the industrial park and satellite plants, to establish the required supervision in relation to the entry and exit of merchandise, contracts and other requirements laid down in the relevant laws and regulations."
- (c) In Article 20, an indent (l) and a final paragraph. The text will now read as follows:

"Article 20.

(1) Export processing enterprises operating as beneficiaries of the Duty-Free Zone Regime which on completion of four years of operation under that Regime reinvest in the country may be granted an additional exemption from payment of income tax, according to the following parameters:

1. If the reinvestment is in excess of twenty-five per cent (25 per cent) of the original investment, the exemption shall be for one additional year.
2. If the reinvestment is in excess of fifty per cent (50 per cent) of the original investment, the exemption shall be for two additional years.
3. If the reinvestment is in excess of seventy-five per cent (75 per cent) of the original investment, the exemption shall be for three additional years.
4. If the reinvestment is in excess of one hundred per cent (100 per cent) of the original investment, the exemption shall be for four additional years.

The additional exemptions shall be for seventy-five per cent (75 per cent) of the income tax payable. The additional exemptions granted in this context shall apply as from the end of the eighth year of operations, without prejudice to the exemptions for the final period of four years initially granted, which shall come into effect on the expiry of the additional exemption period referred to here. In the case of enterprises based in "relatively less developed" zones, the additional exemption shall apply on completion of the twelfth year of operations, without prejudice to the exemptions for the final period of six years initially granted, which shall come into effect on the expiry of the additional exemption period referred to here. The reinvestment giving rise to the additional exemption must be made after completion of the fourth year and before the start of the eighth year of operations under the Duty-Free Zone Regime.

The additional exemption may only be granted to enterprises whose original investment in fixed assets was at least two million United States dollars (US\$2,000,000.00)."

"The enterprises referred to in Article 17(b) shall not qualify for the exemptions specified in paragraphs (f) and (g) of this Article. In cases where an enterprise of the types referred to in other paragraphs of Article 17, other than paragraph (b), carry out marketing activities, the exemption on income tax shall be decreased pro rata according to the level of such activities performed, as laid down in the regulations implementing this Law. The performance of marketing activities by non-



trading companies covered by the Regime may only be a supplementary, as opposed to primary, activity, and shall require prior authorisation from PROCOMER."

(d) Article 20 bis, which shall read as follows:

"Article 20 bis. Duty-Free Zone Regime status shall not be granted to natural or legal persons to operate or develop an enterprise or investment project which has already received incentives under the Regime, even if this was under the name of a different natural or legal person, unless it can be demonstrated that the activity is a new project, or, in exceptional cases, where this is justified by the nature of the project and the magnitude of the additional investments involved; all the above shall be at the discretion of the Ministry of Foreign Trade and in accordance with the provisions of the regulations implementing this Law."

(e) In Article 24, a final paragraph, reading as follows:

1...]

The regulations implementing this Law shall lay down the inspection rules and requirements for the sale of goods and services between enterprises covered by the Duty-Free Zone Regime and enterprises covered by other special import and export regimes."

(f) A new Article 37, with the numbering to be corrected accordingly. The text will read as follows:

Article 37. Industrial park administration companies shall provide a venue for workers to gather and hold meetings, and maintain it in good condition. To assist in the performance of this requirement, workers' representatives shall have free access to the industrial park."

Article 3.

The following provisions of the Duty-Free Zone Regime Law, Law No. 7210, of 23 November 1990, are hereby repealed.

(a) Article 4(g);

(b) Article 31.

Article 4.

The Ministry of Finance, by Regulations issued jointly with the Ministry of Foreign Trade, may exempt enterprises operating under the Duty-Free Zone Regime from certain formalities required for permanent and temporary import and export regimes, having regard to the specific features of the Duty-Free Zone Regime, to bring duty-free zone transactions into line with the requirements for users of the service.

To enter into force as from publication.

For communication to [the Executive].

Legislative Assembly, San José, on the tenth day of September, nineteen hundred and ninety-eight. Rina Contreras López, Vice-President of the Presidency. Manuel Ant. Bolaños Salas, First Secretary. Irene Urpí Pacheco, Second Secretary.

Given at the Presidency of the Republic. San José, on the twenty-second day of September, nineteen hundred and ninety-eight.

For implementation and publication.

MIGUEL ANGEL RODRIGUEZ ECHEVERRIA. Minister of Foreign Trade, Samuel Guzowski R. (one). (Application No. 12718) C42800. (62678).

**NO. 27329-H-COMEX**

**THE PRESIDENT OF THE REPUBLIC AND  
THE MINISTERS OF FINANCE AND FOREIGN TRADE,**

under the powers conferred on them by Article 140 (3) and (18) of the Political Constitution, Article 28(b) of the General Administrative Procedures Law, the Central American Uniform Customs Code III, the General Customs Law, Law No. 7557, Regulations No. 2527O-H, Regulations 26285-H-COMEX and the Income Tax Law, Law No. 7092,

Whereas:

1. Law No. 7092 of 21 April 1988 and amendments thereto, and the Income Tax Law, in Title Y, Chapter XXVII, established a series of incentives for activities for exports of non-traditional products;
2. the said Law also created the Temporary Admission Regime, whose essential and administrative aspects were to be regulated to ensure full compatibility with the objective of promoting exports;
3. the General Customs Law, Law No. 7557, published in "La Gaceta" No. 212 of Thursday 8 November 1995, with entry into force from 1 July 1996, Article 179 and subsequent provisions, laid down the basic rules for the Inward Processing Regime, and includes the Temporary Admission Regime, duly recognising the rights obtained by beneficiaries of that regime;
4. executive decree No. 26285-H-COMEX, published in "La Gaceta" No. 170 of 4 September 1997, laid down, inter alia, the Regulations on the Inward Processing Regime;
5. the transitional provisions of the above regulations, specifically in Transitional Clause III, lay down guidelines on Customs Lien Deeds;
6. it is necessary to legislate in strict accordance with the current legal system;  
now therefore

**Decree as follows:**

Article 1. Transitional Clause III of executive decree No. 26285-H-COMEX, of 4 September 1997, is hereby modified to read as follows:

"Transitional Clause III. Beneficiaries shall be given a period of three months for their legal representative to submit a sworn declaration to the supervising Customs office regarding the inventory of merchandise which has entered under the temporary admission regime, duly certified by an authorised public accountant.

The said declaration must contain the relevant Customs lien numbers."

Article 2. Entry into force

To come into force as from 1 September 1998.

Given at the Presidency of the Republic, San José, on the twenty-sixth day of August, nineteen hundred and ninety-eight.

MIGUEL ANGEL RODRÍGUEZ ECHEVERRÍA.-The Minister of Finance, Leonel Baruch and the Minister of Foreign Trade, Samuel Guzowski. (one). (Application No. N17 163).-C-6750. (61952).

EXECUTIVE BRANCH  
**DECREES**  
**NO. 29055-H-COMEX**  
THE PRESIDENT OF THE REPUBLIC  
AND THE MINISTERS OF FINANCE AND FOREIGN TRADE

under the powers conferred on them by Article 140 (3) and (18) of the Political Constitution, and pursuant to the provisions of Article 190 of the General Customs Law and Transitional Clause V of that Law,

*whereas:*

1. Article 179 of the General Customs Law, Law No. 7557 of 20 October 1995, published in *La Gaceta* No. 212 of 8 November of that year, defines the inward processing regime as "*... the Customs regime used to receive merchandise in the national Customs territory with suspension of all types of tax, subject to lodgement of a guarantee deposit. The merchandise in question must be re-exported, within time-limits laid down in regulations, after undergoing processing, repair, reconstruction, installation or assembly, or after being incorporated in sub-assemblies, machinery, transport equipment in general or appliances with a higher degree of technological or functional complexity, or after being used for other similar purposes, in situations as laid down in regulations or provisions issued for this purpose by the competent administration body.*";
2. Article 3 of Executive Decree No. 26285-H-COMEX of 19 August 1997, published in *en La Gaceta* No. 170 of 4 September that year, that is to say the "Regulations on the Inward Processing and Duty Refund Regimes", defined the term "sales to the domestic market" for the purpose of the regime in question as "sales made into Costa Rica territory or Central America";
3. that definition imposes a restriction, not set down in the Law, for enterprises wishing to operate under the inward processing regime, in that it prevents them from exporting their products to Central America while operating under the benefits of the regime. That restriction, apart from not being stated in the Law, limits, without any technical justification, the application of what is indubitably a legitimate mechanism for Costa Rica exporters, that is to say the inward processing regime;
4. this same restriction is set down in Articles 12 and 18, first paragraph, of the above Regulations;
5. prior to the expiry of export contracts, the export sector in Costa Rica needs to have suitable replacement mechanisms allowing them to compete internationally on an equal footing;
6. the inward processing regime, as set down in the General Customs Law, is precisely one such mechanism, but – as stated above – this regime has been significantly restricted by the definition of the domestic market set down in Articles 3, 12 and 18 of the above-mentioned Regulations;
7. in view of the new situation arising owing to the above-mentioned expiry of export contracts, it is essential to adjust the said regime according to the terms of the General Customs Law, and accordingly it is necessary to re-define the concept of "sales to the domestic market" contained in the provisions with the numbers referred to above;

**now therefore**

DECREE as follows:

Article 1. The definition of "domestic market" contained in Article 3 of Executive Decree No. 26285-H-COMEX of 19 August 1997, published in *La Gaceta* No. 170 of 4 September that year, is hereby amended to read as follows:

"Article 3. Definitions. For the purposes of these Regulations, the following definitions apply: ... Domestic market: "sales to the domestic market" refers to all sales made into Costa Rica territory".

Article 2. Articles 12 and 18, first paragraph of Executive Decree No. 26285-H-COMEX, of 19 August 1997, published in *La Gaceta* No. 170 of 4 September that same year, are hereby amended as follows:

"Article 12. Intended purpose of Production. Enterprises operating under this modality may not sell their products on the domestic market. The production plant must produce solely for re-exports."

"Article 18. For the sale of products in the domestic market, beneficiaries under this modality must pay the full amount of taxes for the definitive import of the merchandise."

..."

Given at the Presidency of the Republic.—San José, on the thirty-first day of October in the year two thousand.

MIGUEL ÁNGEL RODRÍGUEZ ECHEVERRÍA.—The Minister of Finance, Leonel Baruch Goldberg and the Minister of Foreign Trade, F. Tomás Dueñas.—(one)—(Application No. 30062-Comex).—C-13320.—(74513).

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